

83-1288

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NO.

ALEXANDER L. STEVENS

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IN THE  
Supreme Court of the United States

October Term, 1983

ROBERT BRIAN CRIM, an individual,  
Petitioner,

v.

G. WILLIAM HUNTER, United States  
Attorney for the Northern  
District of California,  
Respondent.

PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

ROBERT BRIAN CRIM, pro se,  
32 Pierce Lane,  
Naugatuck, Connecticut,  
06770.  
Telephone: (203) 729-6119.

Questions Presented for Review

- I      Whether under the First, Fifth, or Ninth Amendments, or under the Hornblower's Provision of the Organized Crime Control Act of 1970, Petitioner has standing to sue in an action seeking to oblige compliance of a United States Attorney with Title 18, United States Code §3332(a), 84 Stat. 924:
- A.      Whether the United States District Court for the District of Connecticut erred by dismissing sua sponte Petitioner's action;
- B.      Whether the United States District Court for the District of Connecticut erred or abused its discretion by not allowing Petitioner to amend his complaint;
- C.      Whether the United States Court of Appeals for the Second Circuit

erred or otherwise abused its discretion by not allowing Petitioner to amend his complaint;

- D. Whether the United States Court of Appeals for the Second Circuit erred by upholding the actions of the United States District Court for the District of Connecticut in dismissing Petitioner's complaint or denying his motion to amend;
- E. Whether the United States Court of Appeals for the Second Circuit erred or otherwise abused its discretion by declining to recall its mandate;
- F. Whether the Supreme Court of the United States should vacate judgment to allow Petitioner to amend his complaint.

II Whether Petitioner enjoys an implied right of action to seek reliefs under the Hornblower's Provision of the Organized Crime Control Act of 1970, 18 U.S.C. §3332(a), 84 Stat. 924:

A. Whether the United States District Court for the District of Connecticut erred, upon Petitioner's original attempt to amend his complaint, in failing to find an implied right of action extant in the Hornblower's Provision, §3332(a):

B. Whether the United States Court of Appeals for the Second Circuit erred in upholding the finding of the United States District Court for the District of Connecticut that no implied right of action lay latent in the Hornblower's Provision.



- III Whether the instant complaint(s) are precluded from all future litigation by the principle of res judicata.
- IV (By anticipation;) Whether any portion of the instant complaint(s) have been mooted by any Statute of Limitations.
- V Whether the Supreme Court, of its own motion, should make inquiry into allegations of fraud perpetrated upon it or the courts below in a case previously before all.

Syllabus

Note: This syllabus constitutes no part of the argument advanced by Petitioner but has been prepared by him for the convenience of the reader and in the interests of judicial economy. See United States v. Detroit Timber & Lumber Co., 200 U.S. 321, 337 (1906).

Petitioner brought suit seeking writ in the form of mandamus to compel Respondent, a United States Attorney, to present information obtained and provided by Petitioner to a special federal grand jury sitting in the Northern District of California pursuant to Title 18, United States Code §3331 et seq., and for compensatory and declaratory relief, alleging violation on part of Respondent of the Hornblower's Provision to Title 18, United States Code §3332(a). The United States District

Court for the District of Connecticut dismissed and denied Petitioner's motion to amend complaint, and on appeal judgment was affirmed and further efforts by Petitioner to amend were denied. Brief at 8 to 19, infra. Petitioner's underlying complaints have their origin in a case previously before this Court on two occasions not involving Petitioner as a party. Brief at 2 to 8, infra. Jurisdiction of this Court is asserted to lie pursuant to 28 U.S.C. §1254(1). Brief at xl, infra.

Dismissal was predicated upon the district court's conclusion that Petitioner lacked requisite standing to sue and had failed to plead a judicially cognizable cause of action. Brief at 11 to 13, infra; see Appendices A to F, infra. Petitioner brings error and seeks writ of certiorari.

Argument: At common law, a private individual had an unqualified right to ap-

pear before a properly convened grand jury and lay an indictment before it. Brack v. Wells, 184 Md. 86, 40 A.2d 319, 322, 156 A.L.R. 324, 328 (1944). See Brief at 22 to 27, infra. The appellate panel of the Second Circuit failed properly to analyze Petitioner's asserted right to have his materials presented to the special grand jury, and therein was the root of the claimed error. Brief at 23 to 26, infra:

(a) At the founding of the Government, the right of a private person to appear before a federal grand jury and present evidence for its inspection was the right at common law.

United States v. Dionisio, 410 U.S. 1, 17n.5 (1973); Wharton, Criminal Law (7th ed., 1874), §453 at i:356. See Brief at 27, infra.

(b) The relevant statute passed in the last century prohibiting approaches by private citizens to the grand

jury having been amended in the form of a repeal, 62 Stat. 770, 18 U.S.C. §1504, 18 U.S.C.A. §1504, the state of the law in 1970 when the Hornblower's Provision was passed, as well as today, in relevant terms is the same as in 1794. United States v. Tynen, 11 Wall. 88 (1870); see State v. Baker, 33 W.Va. 319, 10 S.E. 639, 640 (1889). Brief at 27 to 29, infra.

(c) Legislative history of Hornblower's Provision demonstrates that Congress intended to incorporate into 18 U.S.C. §3332(a) a balance between unrestricted access of private individuals to the special grand jury and no access at all. See Petition of Thomas, \_\_\_ Me. \_\_\_, 434 A.2d 503 (1981); United States v. Chanen, 549 F.2d 1306, 1311 (CA9, 1977), cert. den. 434 U.S. 835; Hott v. Yarborough, 112 Tex. 179, 245 S.W. 676 (1922).

Brief at 29 to 36, infra.

The opinion of the Court of Appeals is in conflict with other circuits and at least two States with similar statutes, and there is a general confusion among the lower courts on the underlying question of control of a grand jury. Brief at 36 to 38, infra. These conflicts provide the Supreme Court with adequate reason to grant the writ of certiorari and say definitively what the law is concerning how private citizens are to go about playing their role in the prosecution and suppression of crime. Cf. Parker v. People of Illinois, 332 U.S. 846 (1948). See Brief at 39, infra.

Applying the broad dicta of Linda R. S. v. Richard D., 410 U.S. 614, 619 (1973), to the facts of the instant action generates an absurd consequence and a fundamental injustice. S. v. D., supra, 410 U.S. at 619n.5; United States v. Hicks, 625 F.2d

216 (CA9, 1980), reh.den.; Orr v. Orr, 440 U.S. 268 (1979); accord Strauder v. State of West Virginia, 100 U.S. 303 (1880); see Application of American Broadcasting Companies, 537 F.Supp. 1168 (D.D.C., 1982). Brief at 39 to 40, infra:

(a) Respect for the rules of due process are essential to securing the rights of all under a system of ordered liberty, and to prevent false deprivations. Marshall v. Jerrico, Inc., 446 U.S. 238 (1980). Brief at 41, infra.

(b) "John Wayne" approaches to the problem of law enforcement are precisely what courts have criticized. Finn v. United States, 219 F.2d 894 (CA9, 1955), reh.den. 75 S.Ct. 583 Brief at 40, infra.

(c) Proposition advanced by Respondent that United States Attorney and superiors have discretion as to what

grand jury shall be allowed to hear is contraindicated by Fifth Circuit and State of Maryland. United States v. Cox, 342 F.2d 167 (CA5, 1965), 381 U.S. 935; Ewell v. State, 207 Md. 288, 114 A.2d 66, 71 (1955). Brief at 41 to 43, infra.

The Supreme Court should grant writ of certiorari to reconsider the breadth of the dictum in Linda R.S. v. Richard D., supra, as well as the Second Circuit's extension of same to important federal question of private access to special grand juries. Heflin v. United States, 358 U.S. 415, 416-417 (1959); see Hale v. Henkel, 201 U.S. 43, 63 (1906); Frisbie v. United States, 157 U.S. 160, 163 (1895). Brief at 43, infra.

That an implied right of action does lie under the Hornblower's Provision, particularly where the United States Attorney or his superiors entertain clear conflicts



of interest is supported by language of statute. Cf. Petition of Thomas, supra, 434 A.2d at 507; Board of Supervisors v. Simpson, 36 Cal.2d 671, 227 P.2d 14, 15 (1951); and Hott v. Yarborough, supra, with Cort v. Ash, 422 U.S. 66, 68n.1 (1975). Brief at 43 to 46, infra. That mandamus is proper remedy is clear. Board of Supervisors v. Simpson, supra, 227 P.2d at 17. Brief at 44 to 46, infra. Here, a private right of action arises by implication. Miller v. Mallery, 410 F.Supp. 1282 (D.Ore., 1976). Petitioner clearly is within the "zone of interest" protected by the Hornblower's Provision. Cannon v. University of Chicago, 441 U.S. 677, 689 (1979); Texas & Pacific Co. v. Rigsby, 241 U.S. 33, 40 (1916). Brief at 46 to 51, infra. Supreme Court should grant writ of certiorari to consider important question of implied right of action under 18 U.S.C. §3332(a). S.Ct. Rule 17.1(c).

The Court of Appeals should have allowed Petitioner to amend his complaint. Warth v. Seldin, 422 U.S. 490, 501-502 (1975). Petitioner suffered injury in fact, Ludlow Corporation v. Securities & Exchange Com'n., 604 F.2d 704, 706-707 (CA DC, 1979), reaching to constitutional dimensions, Perry et al. v. Sinderman, 408 U.S. 593 (1972), and benefits directly by being allowed to "put his money where his mouth is" and approach the grand jury. Petitioner does have requisite standing and cause of action. Davis v. Passman, 442 U.S. 228 (1979. Brief at 54 to 56, infra. This lawsuit neither is res judicata nor moot. Brief at 59, infra. And, if nothing else, this Court ought to make inquiry upon its own motion into matters previously before it. Brief at 60, infra.

## TABLE OF CONTENTS

Questions Presented for Review.	i
Syllabus.	v
Contents.	xiv
Tables of Authorities.	xix
Jurisdictional Statement:	xxxvii
A.    Opinions Below.	xxxvii
B.    Jurisdiction.	xxxviii
C.    Constitutional and Sta- tutory Provisions.	xli
Statement of the Case:	2
A.    Foundational Incidents.	2
B.    The Instant Action.	8
C.    Opinion of the Panel.	16
Reasons for Granting the Writ:	19

## I

A.    Introduction.	19
B.    The Appellate Panel Has Not Performed the Analysis of Pe- titioner's Asserted Rights Which the Second Circuit in Its Previous Decisions Required.	23

- C. Failure of the Appellate Panel to Perform Appropriate Analysis of Petitioner's Asserted Right Places Its Order of 17 December 1982 at Variance with Decisions of Other Circuits and at Least Two of the States. 26
- (1) Legislative History of the Hornblower's Provision. 30n
- D. Applying Broad Dicta of Linda R.S. v. Richard D. to the Facts of the Instant Action Generates Absurd Consequences and Fundamental Injustice. 39

## II

- E. Implied Rights of Action Lie Under the Hornblower's Provision Where the Executive Entertains Conflicts of Interest. 43

## III

- F. The Courts Below Erred by Denying Petitioner's Motion to Amend Complaint. 53
- (1) The Court of Appeals Focused on Petitioner's Second Claim of Injury to the Detriment of the First. 53
- (2) Petitioner's Complaint Should Have Been Construed Liberally. 54

(3)	Petitioner Was Injured in Fact.	54
(4)	Petitioner's Injuries Were Constitutional in Scope.	55
(5)	Petitioner Had Requisite Standing and a Cause of Action.	56
(6)	This Court May Allow Amendment of Pleadings.	56
(7)	The Instant Action Is Not Res Judicata.	59
(8)	The Instant Action Has Not Been Mooted.	59
(9)	This Court Should Inquire Upon Its Own Motion Con- cerning Matters Previously Before It.	60
G.	Conclusion.	61
(1)	Writ of Certiorari Should Be Granted to Consider Im- portant Federal Questions Raised.	62
	Proof of Service.	63
	Appendix:	A
Appendix A:	Opinion and Order, Uni- ted States Court of Ap- peals, Second Circuit, 17 December 1982.	A-1

Appendix B:	Order, United States Court of Appeals, Second Circuit, 08 March 1983.	A-7
Appendix C:	Order, United States Court of Appeals, Second Circuit, 27 January 1982.	A-10
Appendix D:	Order, United States Court of Appeals, Second Circuit, 19 May 1983.	A-12
Appendix E:	Opinion & Order, United States District Court, District of Connecticut, 31 March 1981.	A-14
Appendix F:	Minute Order, United States District Court, District of Connecticut, 02 July 1981.	A-17
Appendix G:	Judgment & Mandate.	A-19
Appendix H:	Reply Brief of Appellant, <u>Crim v. Hunter</u> , #81-6177 (CA2) at 15-17.	A-22
Appendix I:	Opinion & Order, United States Court of Appeals, Second Circuit, 10 April 1979.	A-28
Appendix J:	Complaint, <u>Crim v. Hunter</u> , #N81-130 (D. Conn.).	A-32
Appendix K:	Complaint (as amended).	A-52

Appendix L: Complaint (as amended II).	A-54
Appendix M: Complaint (as amended IV).	A-56
Appendix N: Statutes.	A-58
Jurisdictional Statutes.	A-59
Declaratory Judgment Act.	A-61
Statutes of Limitations.	A-61
Principals and Accessories.	A-62
Criminal Statutes.	A-63
Insurrection.	A-67
National Bank Robbery Act.	A-67
Treason.	A-69
Note on Capital Crimes.	A-69

## TABLES OF AUTHORITIES

Cases:

<u>Abbott v. The Queen</u> , 63 Crim.App. R. 241 (1976)(P.C.).	5n.3
<u>Afro-American Publishing Co. v. Jaffe</u> , 366 F.2d 649 (CA DC, 1966).	40-41
<u>Anderson v. Yungkau</u> , 329 U.S. 482 (1947).	30n.41, 35n.43
<u>Application of American Broad- casting Companies</u> , 537 F.Supp. 1168 (DDC, 1982).	4, 40, 18n.13
<u>Application of Eisenberg</u> , 654 F.2d 1107 (CA5, 1981).	8n.11
<u>Application of Yamashita</u> , 327 U.S. 1 (1946).	41
<u>Aspen Mining &amp; Smelting Co. v. Billings</u> , 150 U.S. 31 (1893).	2n.1
<u>Association of Data Processing Services v. Camp</u> , 397 U.S. 150 (1970).	17
<u>Baker v. Carr</u> , 369 U.S. 186 (1962).	24-25, 24n.24, 61n.134
<u>Ballou v. General Electric Co.</u> , 393 F.2d 398 (CA1, 1968).	60n.133
<u>Bienville Water Supply Co v. Mobile</u> , 186 U.S. 212 (1902).	2n.1



- Bivens v. Six Unknown Named Agents,  
Federal Bureau of Narcotics,  
 403 U.S. 388 (1971). 14
- Blaney v. State, 74 Md. 153, 21 A.  
 347 (1891). 22n.22
- Boag v. MacDougall, 70 L.Ed.2d 54, 57,  
 351 (1982). 62
- Board of Supervisors v. Simpson, 24,  
 36 Cal.2d 671, 227 P.2d 14 30n.41,  
 (1951). 44n.111,  
 44-46
- Boyne v. Ryan, 100 Cal. 265,  
 34 P. 707 ( ). 45
- Brack v. Wells, 184 Md. 86, 19n.14,  
 40 A.2d 319, 156 A.L.R. 22,  
 324 (1944). 28n.33
- Branzburg v. Hayes, 408 U.S.  
 665 (1972). 19-22
- Browning v. State, 37 Ala.App.  
 137, 13 So.2d 54 (1943). 5n.3
- Burke v. Compania Mexicana de  
Aviacion, S.A., 433 F.2d  
 1031 (CA9, 1970). 47, 48
- Cannon v. University of Chicago, 43,  
 441 U.S. 677 (1979). 47-51,  
 61n.134
- Carolene Products Co. et al. v.  
United States, 323 U.S. 18  
 (1944). 2n.1
- Cawley v. Warren, 216 F.2d 74  
 (CA7, 1954). 38

<u>Charge to Grand Jury, #18,255,</u> 30 F.Cas. 992, 2 Sawy. 667 (C.C.D.Cal., 1872).	28n.33
<u>Commonwealth v. Fugmann, 330 Pa.</u> 3, 198 A. 99 (1938).	7
<u>Conley v. Gibson, 355 U.S. 41 (1957).</u>	11
<u>Coppedge v. United States, 311</u> F.2d 128 (CA DC, 1962).	30n.41, 38
<u>Cort v. Ash, 422 U.S. 66 (1975).</u>	17, 33, 44n.111, 47, 50, 51n.114
<u>Costello v. United States, 350</u> U.S. 359 (1956).	21
<u>Cox v. Hauberg, 381 U.S. 935 (1966).</u>	12
<u>Craig v. Harney, 331 U.S. 367</u> (1947).	8n.11
<u>Crim v. Bell et al., #N81-150</u> (D.Conn., 1978).	59
<u>Crim v. Bell et al., #78-2132</u> (CA2, 1979).	17
<u>Crim v. Egger, C.I.R., #21268-82</u> (T.C.).	49n.113
<u>Crim v. Hunter, #81-6177</u> (CA2, 1982).	16-18, 23, 26, 31, 43, 54
<u>Crim v. Hunter, #A-909 (S.Ct.,</u> 1983).	
<u>Culombe v. Connecticut, 367 U.S.</u> 568 (1961).	6n.4

<u>Curtis Publishing Co. v. Butts</u> , 388 U.S. 130 (1967).	8
<u>D'Aquino v. United States</u> , 192 F.2d 338 (CA9, 1951).	5n.2
<u>Davis v. Passman</u> , 442 U.S. 228 (1979).	51n.114, 56
<u>Duke v. United States</u> , 112 A.L.R. 317 (CA4, 1937).	28n.33
<u>Dusky v. United States</u> , 295 F.2d 743 (CA8, 1961).	4
<u>Erie R. Co. v. Tompkins</u> , 304 U.S. 64 (1938).	43
<u>Estevez v. Nabers</u> , 219 F.2d 321 (CA3, 1955).	59n.124
<u>The Evergreens v. Nunan</u> , 141 F.2d 927 (CA2, 1944).	59n.124
<u>Ewell v. State</u> , 207 Md. 288, 114 A.2d 66 (1955).	42
<u>Fikes v. State of Alabama</u> , 352 U.S. 191 (1957).	6n.4
<u>Finn v. United States</u> , 219 F.2d 894 (CA9, 1955).	40
<u>Flast v. Cohen</u> , 392 U.S. 83 (1968).	24
<u>Garrison v. United States</u> , 154 F.2d 106 (CA5, 1946).	12n.12
<u>Hagans v. Lavine</u> , 415 U.S. 528 (1974).	62
<u>Haines v. Kerner</u> , 404 U.S. 519 (1972).	54, 57

<u>Hale v. F.C.C.</u> , 425 F.2d 556 (CA9, 1970).	38
<u>Hale v. Henkel</u> , 201 U.S. 43 (1906).	43
<u>Hamric v. Bailey</u> , 386 F.2d 390 (CA4, 1967).	5n.3
<u>Hardin v. Kentucky Utilities Co.</u> , 390 U.S. 1 (1968).	24
<u>Harris et al. v. California</u> , 444 U.S. 862 (1979).	2n.1, 20n.21
<u>Harris v. Superior Court of Alameda County</u> , 19 Cal.3d 786, 140 Cal.Rptr. 318, 567 P.2d 750 (1977).	2n.1
<u>Hearst v. United States</u> , 435 U.S. 1000 (1977).	2n.1, 6, 61n.141
<u>Heflin v. United States</u> , 358 U.S. 415 (1959).	43
<u>Hollman v. Warren</u> , 32 Cal.2d 351, 196 P.2d 562 ( ).	45
<u>Holtzman et al. v. Schlesinger</u> , 414 U.S. 1304 (1973).	41n.44
<u>Hott v. Yarborough</u> , 112 Tex. 179, 245 S.W. 676 (1922).	30n.41, 35n.43, 36, 44n.111
<u>Hurtado v. California</u> , 110 U.S. 516 (1884).	26n.31, 27n.32
<u>Inmates of Attica Correctional Facility v. Rockefeller</u> , 477 F.2d 375 (CA2, 1973).	46n.112
<u>In re Grand Jury</u> , January 1969, 315 F.Supp. 662 (D.Md., 1970).	11, 26n.31

- In re Mills, 135 U.S. 263 (1890). 27n.32
- In re Opinion to Governor, 62 R.I. 200, 4 A.2d 487 (1939). 22n.22, 26n.31
- J.I Case Co. v. Borak, 377 U.S. 426 (1964). 50
- Knowlton v. Moore, 178 U.S. 41 (1899). 24n.24
- Leo Sheep Co. v. United States et al., 440 U.S. 668 (1979). 29n.34
- Leyra v. Denno, Warden, 347 U.S. 536 (1954). 6n.4
- Linda R.S. v. Richard D., 410 U.S. 614 (1973). 11, 17, 18n.13, 23, 39-40, 43, 53, 59n.131
- Liverpool, N.Y. & P. Steamship Co. v. Commissioners of Emigration, 113 U.S. 33 (1885). 24n.24
- Ludlow Corp. v. S.E.C., 604 F.2d 704 (CA DC, 1979). 54
- Lynch v. Director of Public Prosecutions, [1975] 1 All E.R. 913 (H.L.). 5n.3
- Marbury v. Madison, 1 Cranch 137 (1804). 24n.24
- Marsh v. Commercial and Savings Bank of Winchester, Virginia, 265 F.Supp. 614 (W.D. Vir., 1967). 8n.11
- Marshall v. Jerrico, Inc., 446 U.S. 238 (1980). 41, 61

<u>Medical Committee for Human Rights</u> <u>v. S.E.C.</u> , 432 F.2d 259 (CA2, 1970).	38
<u>Merckins v. F.I. DuPont, Glore</u> <u>Forgan &amp; Co.</u> , 514 F.2d 20 (CA2, 1975).	11
<u>Merrill Lynch, Pierce, Fenner &amp;</u> <u>Smith v. Curran</u> , 456 U.S. 353 (1982).	29, 50, 60n.132
<u>Meyer v. State of Nebraska</u> , 262 U.S. 390 (1923).	55
<u>Miller v. Mallery</u> , 410 F.Supp. 1283 (D.Ore., 1976).	12, 48
<u>Mooney v. Holohan, Warden</u> , 294 U.S. 103 (1935).	6n.4
<u>Moose Lodge No. 107 v. Irvis</u> <u>et al.</u> , 407 U.S. 163 (1972).	25
<u>Nagler v. Admiral Corp.</u> , 248 F.2d 319 (CA2, 1957).	60n.133
<u>Nash v. Califano</u> , 613 F.2d 10 (CA2, 1980).	26
<u>New York Indians v. United</u> <u>States</u> , 170 U.S. 1 (1898).	2n.1
<u>New York Times Co. v. Sullivan</u> , 376 U.S. 254 (1964).	56
<u>Nishikawa v. Dulles</u> , 356 U.S. 129 (1958).	5n.2
<u>Office of Communication, United</u> <u>Church of Christ v. F.C.C.</u> , 425 F.2d 543 (CA2, 1969).	38
<u>Olmstead v. United States</u> , 277 U.S. 438 (1928).	42

- Orr v. Orr, 440 U.S. 268 (1979). 18n.13,  
40
- Parker v. People of Illinois,  
332 U.S. 846 (1948). 38
- Payne v. State of Arkansas, 356  
U.S. 560 (1958). 6n.4
- Peonage Cases, 123 F. 671 (M.D.  
Ala., 1903). 61n.141
- People v. Adcock, 29 Ill.App.3d  
917, 331 N.E.2d 573 (1975). 5n.3
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39 P. 1073 (1895). 5n.3
- People v. Doss, 382 Ill. 307,  
46 N.E.2d 984 (1943). 28n.33
- People v. Harris et al.,  
#321099A (L.A.Cty., Cal.,  
1976). 2n.1
- People v. Merhige, 212 Mich.  
601, 180 N.W. 418 (1920). 5n.3
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Cal.App.3d 193, 103 Cal.Rptr.  
645, 66 A.L.R.3d 717 (1972). 46n.112
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30 N.E.2d 11 (1940). 28n.33
- People v. Remiro et al., 89  
Cal.App.3d 809, 153 Cal.  
Rptr. 89 (1979). 2n.1
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202, 181 N.E. 617 (1932). 22n.22
- People v. Sing Chan, 64 Cal.App.2d  
167, 148 P.2d 81 (1944). 5n.3

<u>People v. Yoshimura</u> , 91 Cal.App.3d 609, 154 Cal.Rptr. 314 (1979).	2n.1
<u>People ex rel. Ferrill v. Gray-</u> <u>don, Sheriff</u> , 333 Ill. 429, 164 N.E. 832 (1928).	22n.22, 26n.31, 38
<u>Perry et al. v. Sindermann</u> , 408 U.S. 593 (1972).	55
<u>Petition of Thomas</u> , Me. —, 434 A.2d 503 (1981).	25, 36, 30n.41, 35n.43, 44n.111
<u>Prarie Band of Tribe of Pot-</u> <u>tawatomie Indians v.</u> <u>Udall</u> , 355 F.2d 364 (CA10, 1966).	30n.41
<u>Prince v. United States</u> , 352 U.S. 322 (1957).	60n.132
<u>Proto v. Bridgeport Herald Corp.</u> , 136 Conn. 557, 72 A.2d 820 (1950).	8
<u>Pugach v. Klein</u> , 193 F.Supp. 630 (SDNY, 1961).	41-42
<u>Reck v. Pate</u> , 367 U.S. 433 (1961).	6n.4
<u>Reeves v. American Broadcasting</u> <u>Companies, Inc.</u> , 719 F.2d 602 (CA2, 1983).	8n.11, 56n.122
<u>Regina v. Russell</u> , Car. & M. 247.	22n.22
<u>Rogers v. Missouri Pacific R.</u> <u>Co.</u> , 352 U.S. 500 (1957).	25
<u>Rosenblatt v. Baer</u> , 383 U.S. 75 (1966).	41



<u>Ross v. State</u> , 169 Ind. 388, 82 N.E. 781 (1907).	5n.3
<u>Schware v. Board of Bar Exami- ners, State of New Mexico</u> , 353 U.S. 232 (1957).	55
<u>Simpson v. United States</u> , 435 U.S. 6 (1978).	60n.132
<u>State v. Baker</u> , 33 W.Va. 319, 10 S.E. 639 (1889).	22n.22, 29
<u>State v. California Packing Corp.</u> , 105 Utah 191, 145 P.2d 784 (1944).	59n.124
<u>State v. Hauptmann</u> , 115 N.J.L. 412, 180 A. 809 (1935).	7
<u>State v. Kearns</u> , 27 N.C.App. 354, 219 S.E.2d 228 (1975).	5n.3
<u>State v. St. Clair</u> , ____ Mo. ____, 262 S.W.2d 25, 40 A.L.R.2d 903 (1953).	5n.3
<u>Stewart v. Traveler's Corp.</u> , 503 F.2d 108 (CA9, 1974).	46-47
<u>Strauder v. State of West Vir- ginia</u> , 100 U.S. 303 (1880).	18n.13, 40
<u>Surowitz v. Hilton Hotels Corp.</u> , 383 U.S. 363 (1966).	58
<u>Sweat v. State</u> , 90 Ga. 315, 17 S.E. 273 (1893).	61n.141
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U.S. Const., Amend. V.	22, 55-56
U.S. Const., Amend. IX.	22
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18 U.S.C. §4, 62 Stat. 684.	7

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18 U.S.C. §1583, 62 Stat. 772.	7
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18 U.S.C. §3282, 62 Stat. 828.	7
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28 U.S.C. §1331, 90 Stat. 2721, 94 Stat. 2369.	9, 14
28 U.S.C. §1343(4), 93 Stat. 1284.	9, 14
28 U.S.C. §1361, 76 Stat. 744.	9, 14
28 U.S.C. §1391(e), 90 Stat. 2721.	9, 14
28 U.S.C. §1653, 62 Stat. 944.	13, 56

28 U.S.C. §2201, 62 Stat. 964, 63 Stat. 105, 68 Stat. 890, 72 Stat. 349, 90 Stat. 1719, 92 Stat. 2672.	9, 14
42 U.S.C. §1981, R.S. §1977.	29, 50
Fed.R.Civ.Pro. Rule 59(a).	19n.14
Fed.R.Civ.Pro. Rule 60(b).	19n.14
S.Ct. Rule 17.1(c).	52
Calif. Civ.Code §47.	8n.11
Calif. Code Civ.Proc. §731.	44, 45
Calif. Code Civ.Proc. §1085.	45
Calif. Code Civ.Proc. §1963(15).	46
Calif. Gov't.Code §14.	44
Calif. Gov't.Code §26528.	44, 45
15 Me.R.S.A. §1256.	36
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35n.43



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1113. 28n.33

JURISDICTIONAL STATEMENT

## PETITION FOR WRIT OF CERTIORARI

Petitioner Robert Brian Crim, pro se, petitions this honorable Court for writ of certiorari to the United States Court of Appeals for the Second Circuit that this Court might review favorably decisions of the courts below, reversing the order entered by the court of appeals on 17 December 1982. For the purpose of this petition, Petitioner avers that the gravamen of his complaints is not affected adversely by any mooting of the suit occasioned by lapse of the general Statute of Limitations of the United States, 18 U.S.C. §3282, 62 Stat. 828, 68 Stat. 1145, 75 Stat. 648.

## OPINIONS BELOW

None of the lower courts' opinions have been published. The six opinions or orders relevant and material to the instant

petition are attached hereto in the jurisdictional appendix. See Appendices A through F, inclusive, infra.

Additionally, the opinion and order of the court of appeals entered 10 April 1979 affirming dismissal of Petitioner's complaint, Crim v. Bell et al., #78-2132 (CA2), is attached hereto as Appendix I.

#### JURISDICTION

On 17 December 1982, the Court of Appeals for the Second Circuit entered an order affirming the United States District Court for the District of Connecticut's dismissal sua sponte, for want of his standing to sue, Petitioner's complaint. Petitioner filed motions for rehearing en banc and rehearing out of time on 04 January 1983; the motion for rehearing out of time was granted, and on 08 March 1983, the motion for rehearing was "denied without prejudice to the application that the petition

be heard en banc."

On 09 May 1983, Mr. Justice Marshall granted Petitioner's motion before this Court seeking extension of time in which to file petition for writ of certiorari; per Mr. Justice Marshall's order, Crim v. Hunter, #A-909 (1983), time for filing the petition was extended through and including 08 August 1983. On said date, the petition was mailed to the Court pursuant to S.Ct.Rule 28.2. An attorney's affidavit attesting to timely mailing has been filed with the Clerk.

The Clerk returned all papers to Petitioner pursuant to S.Ct.Rule 33.7; subsequent efforts by Petitioner to file his papers were interdicted by the Clerk, and a lengthy legal discussion followed.<sup>9</sup> Now

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<sup>9</sup> Petitioner felt constrained from filing a Form-4 affidavit required by Rule 46.1 because the form seeks absolution from all costs and Petitioner at the time had sufficient funds to pay the Clerk's fee but not print the brief. An alternative affi-

comes Petitioner and proffers forty copies of a printed brief conforming to S.Ct.Rule 19.3. It respectfully is submitted that this Court has jurisdiction over the instant petition pursuant to the provisions of 28 U.S.C. §1254(1), and that sanctions under Rule 33.7 would be inappropriate. See note 0, supra.

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davit and a Rule 42 motion to be freed from printing requirements were proffered instead and rejected, even though Petitioner cited numerous cases of this Court where such motions had been granted. See e.g. Calley v. Callaway, 423 U.S. 888 (1975); United States v. S.C.R.A.P., 409 U.S. 1073 (1972); Mempa v. Rhay, 386 U.S. 907 (1967); Walkling v. Rhay, 386 U.S. 907 (1967); Prudhomme v. Al Johnson Construction Co., 414 U.S. 1090 (1973); Durst v. United States Court of Appeals for the Ninth Circuit et al., 409 U.S. 947 (1972); Cardona et al. v. Saxbe, Attorney General et al., 415 U.S. 908 (1974); Martin-Trigona v. Supreme Court of Illinois, 415 U.S. 910 (1974); D.H. Overmyer Co. et al. v. Frick Co., 404 U.S. 812 (1971); Matter of Whittington, 88 S.Ct. 1096 (1968); Vela et al. v. Vowell et al., 414 U.S. 1154 (1974). Unknown to Petitioner (who is not an attorney), this Court recently had changed its procedure. Miller v. Pierce, #82-6778 (31 Oct. 1983). For this reason, Petitioner avers that this Court should not penalize him per Rule 33.7 for being so late in the instant submission.

CONSTITUTIONAL AND STATUTORY PROVISIONS

Art. II, §1, cl. 1 of the Constitution of the United States says in part:

The executive power shall be vested in a President of the United States of America.

Art. II, §3 of the Constitution of the United States says in part:

[The President] shall take care that the laws be faithfully executed \* \* \*

Art. III, §2, cl. 1 of the Constitution of the United States says in part:

The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; \* \* \*

Art. III, §1 of the Constitution of the United States says in part:

The judicial power of the United States shall be vested in

one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish.

The First Amendment to the Constitution of the United States says in part:

Congress shall make no law \* \* \* abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

The Fifth Amendment to the Constitution of the United States says in part:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person \* \* \* be deprived of life, liberty, or property, without due process of law; \* \* \*

The Ninth Amendment to the Constitution of the United States says:

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Title 18, United States Code §3332(a),  
84 Stat. 924, says:

It shall be the duty of each such grand jury impaneled within any judicial district to inquire into offenses against the criminal laws of the United States alleged to have been committed within that district. Such alleged offenses may be brought to the attention of the grand jury by the court or by any attorney appearing on behalf of the United States for the presentation of evidence. Any such attorney receiving information concerning such an alleged offense from any other person shall, if requested by such other person, inform the grand jury of such alleged offense, the identity of the person providing the information, and such attorney's action or recommendation.

Title 18, United States Code §1504,  
62 Stat. 770, says in part:

Nothing in this section shall be construed to prohibit the



communication of a request to appear before the grand jury.

Title 42, United States Code §1981, R.S. §1977, see c. 114, §16, 16 Stat. 144, says in part:

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to \* \* \* give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens \* \* \*

Title 5, United States Code §702, 80 Stat. 392, 90 Stat. 2721, says in part:

A person suffering legal wrong because of agency action or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof. An action in a court of the United States seeking relief other than money damages and stating a claim that an agency or an officer or employee thereof acted or failed to act in an official capacity or under color of legal authority shall not be dismissed nor relief therein be denied on the

ground that it is against the United States or that the United States is an indispensable party.

Title 5, United States Code §701(a),  
80 Stat. 392, says:

This chapter applies according to the provisions thereof, except to the extent that --

- (1) statutes preclude judicial review; or
- (2) agency action is committed to agency discretion by law.

Title 28, United States Code §1653,  
62 Stat. 944, says:

Defective allegations of jurisdiction may be amended, upon terms, in the trial or appellate courts.

Art. III, §2, cl. 2 of the Constitution of the United States says:

In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be a party, the

Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and to fact, with such exceptions, and under such regulations as the Congress shall make.

Petitioner has consigned to the Appendix texts of the relevant jurisdictional statutes, 28 U.S.C. §§1331, 1343(a)(4), 1361, 1391(e), and 2201, along with other statutes of interest. Appendix N, infra; see Petition at 7, infra.

STATEMENT OF THE CASE

A. Foundational Incidents.

As both the district court and the court of appeals quite accurately recognized, Petitioner is an accredited historian seeking to publish in the future certain manuscripts concerning one Patricia Campbell Hearst (whom this honorable Court has met before on several occasions) and a fourth manuscript devoted in part to coverage of the Iranian hostage crisis. Appendices A and E, infra. The instant action has its origins in these incidents and the legal proceedings which this Court should notice were generated by them.<sup>1</sup>

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<sup>1</sup> While it ordinarily is true that the Supreme Court will notice only such facts as are found by the courts below, it may take notice of matters of common observation, of statutes, records, or public documents previously not called to its attention, of reports of the committees of the House of Representatives, of other petitions for certiorari granted or denied, the accompanying documents, officially

The Court also should notice that the said Patricia Campbell Hearst recently has found it within herself publicly to relate

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reported opinions and findings of the lower courts, or similar matters of judicial cognizance. New York Indians v. United States, 170 U.S. 1, 18 (1898); Carolene Products Co. et al. v. United States, 323 U.S. 18, 28 (1944); Aspen Mining & Smelting Co. v. Billings, 150 U.S. 31 (1893); Wells v. United States, 318 U.S. 257, 260 (1943); Blenville Water Supply Co. v. Mobile, 186 U.S. 212 (1902); United States v. Pink, 315 U.S. 203, 216 (1942).

This Court may care to refresh its memory by taking a look at People v. Remiro, et al., 89 Cal.App.3d 809, 153 Cal.Rptr. 89 (1979), reh.den.; Committee on Internal Security, House of Representatives, 93d Congress, 2d session, Terrorism, Part 3 (hearings of 26-27 June, 10-11 July, 23 July & 13 Aug. 1974) at 3915-36, 3979-4008, 4029-59; Harris v. Superior Court of Alameda County, 19 Cal.3d 786, 140 Cal.Rptr. 318, 567 P.2d 750 (1977); United States v. Hearst, 412 F.Supp. 858 et seq. (N.D.Cal., 1975-76); United States v. Weiner et al., 418 F.Supp. 941 (M.D.Pa., 1976), aff'd. sub nom. United States v. Shinnick, 546 F.2d 420, 546 F.2d 421, cert. den. 429 U.S. 1105; People v. Yoshimura, 91 Cal.App.3d 609, 154 Cal.Rptr. 314 (1979), reh.den.; United States v. Hearst, 563 F.2d 1331 (CA9, 1977), reh. en banc den. 573 F.2d 579, cert.den. 435 U.S. 1000; United States v. Hearst, 424 F.Supp. 307 et seq. (N.D.Cal., 1976), aff'd. 563 F.2d 1331; United States v. Hearst, 435 F.Supp. 29 (N.D.Cal., 1977), aff'd. 563 F.2d 1331;

certain of those details of her circumstances immediately familiar to her. Patricia Campbell Hearst with Alvin Moscow, Every Secret Thing (Garden City, N.Y.: Doubleday, 1982).<sup>99</sup> This honorable Court should recall (and may consult its own records if it does not recall) that Miss Hearst was convicted of violating the National Bank Robbery Act, 18 U.S.C. §2113 (a,d), and that her case involved, among

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United States v. Hearst, 466 F.Supp. 1068 (N.D.Cal., 1978), aff'd. in part, rev. in part 638 F.2d 1190, cert.den. 451 U.S. 938; see also People v. Harris et al., #321099A (L.A.Cty., Cal., 1976), cert.den. 444 U.S. 862; United States v. Soliah, Cr. #75-523 PCW (E.D.Cal., 1976).

<sup>99</sup> Petitioner, himself, has no doubts concerning the abilities of the members of this Court properly to recognize the legal presumptions they may make concerning all this. See e.g. Dusky v. United States, 295 F.2d 743, 753-754 (CA8, 1961), cert. den. 368 U.S. 998. Proof of such may be found by them in the very papers which Petitioner asks this honorable Court to review. Notice that Petitioner having worked the Hearst case very hard since 14 August 1974, the Court can rest assured that Petitioner knows what he is about.

other matters, a plea of duress.<sup>2</sup> Petitioner has studied the parameters of this defense very carefully,<sup>3</sup> and though he admittedly is not an attorney, nevertheless, "after exhaustive research of the Hearst

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<sup>2</sup> See D'Aquino v. United States, 192 F.2d 338 (CA9, 1951), cert.den. 343 U.S. 935; accord Nishikawa v. Dulles, 356 U.S. 129 (1958).

<sup>3</sup> Cf. United States v. Chapman, 455 F.2d 746 (CA5, 1972); United States v. McClain, 531 F.2d 431 (CA9, 1976), cert.den. 429 U.S. 835; and Browning v. State, 37 Ala. App. 137, 13 So.2d 54 (1943); with State v. Kearns, 27 N.C.App. 354, 219 S.E.2d 228 (1975), cert.den. 289 N.C. 300, 222 S.E.2d 700; see further People v. Merhige, 212 Mich. 601, 180 N.W. 418 (1920); cf. Lynch v. Director of Public Prosecutions, [1975] 1 All E.R. 913 (H.L.), with Abbott v. The Queen, 63 Crim.App.R. 241 (1976)(P.C.); but see also United States v. Moore, 486 F.2d 1139, 1179-85 (CA10, 1973)(Levanthal, J., concurring), cert.den. 414 U.S. 980; cf. Ross v. State, 169 Ind. 388, 82 N.E. 781 (1907); and People v. Sing Chan, 64 Cal.App.2d 167, 148 P.2d 81 (1944); with State v. St. Clair, Mo. \_\_\_, 262 S.W.2d 25, 40 A.L.R.2d 903 (1953); and People v. Button, 106 Cal. 628, 39 P. 1073 (1895); see People v. Adcock, 29 Ill.App.3d 917, 331 N.E.2d 573, 575-576 (1975); Hamric v. Bailey, 386 F.2d 390 (CA4, 1967); United States v. Ashton, #14,470, 24 F.Cas. 873, 2 Sumn. 13 (C.C.D.Mass., 1834).

case," Complaint (as amended IV) at ¶¶ 7(b,c,d,e), Appendix M, infra, has concluded that there are "several material irregularities," Miller v. Pate, 386 U.S. 1 (1967), in the proceedings against her. Cf. e.g. United States v. Hearst, #77-1089 (1977), Petition for Certiorari at 21-27; with United States v. Hearst, loc. cit., Government's Opposition at 11-16.<sup>4</sup> In that Miss Hearst was remanded to the custody of the Attorney General subsequent to this Court's denial of her original petition, 435 U.S. 1000, and incarcerated until released by official Presidential proclamation on 01 February 1979, given that five years from 01 February 1979 is 01 February 1984, the General Statute of Limi-

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<sup>4</sup> See also Reck v. Pate, 367 U.S. 433, 444 (1961) (Douglas, J., concurring); Leyra v. Denno, Warden, 347 U.S. 556 (1954); Payne v. State of Arkansas, 356 U.S. 560 (1958); Fikes v. State of Alabama, 352 U.S. 191 (1957); see generally Culombe v. Connecticut, 367 U.S. 568 (1961); and Mooney v. Holohan, Warden, 294 U.S. 103 (1935).



tations, 18 U.S.C. §3282, 75 Stat. 648, has not expired -- yet. The predication underlying the instant petition encompasses possible violations of 18 U.S.C. §§2, 4, 242, 371, 401, 1503, 1583, 1622, and other, more serious infractions, the prosecution of which was interdicted by the final securing of Patricia Hearst's conviction and what Petitioner alleges to be an effort to cover how that securing was obtained. The Hearst kidnappings having been made the biggest case in American history since the death of the Lindbergh's baby, see State v. Hauptmann, 115 N.J.L. 412, 180 A. 809 (1935), cert.den. 296 U.S. 649; quoted with approval in Commonwealth v. Fugmann, 330 Pa. 3, 198 A. 99 (1938), and having become an important chapter in the history of the Federal Bureau of Investigation, see Editors of Look, The Story of the FBI (New York: E.P. Dutton) at 89-90, not surprisingly Petitioner was and

remains desirous of issuing his own edition of Patty's Life and Times, a desire until now checked by certain legal considerations, Curtis Publishing Co. v. Butts, 388 U.S. 130 (1967); Proto v. Bridgeport Herald Corp., 136 Conn. 557, 72 A.2d 820 (1950), considerations which Petitioner had hoped the instant action would cure.<sup>11</sup>

#### B. The Instant Action.

On 19 March 1981, Petitioner filed the original complaint with the United States District Court for the District of Connecticut. Appendix J, infra, for text.

<sup>11</sup>

See Mars v. Commercial and Savings Bank of Winchester, Virginia, 265 F.Supp. 614 (W.D.Vir., 1967); Application of Eisenberg, 654 F.2d 1107, 1113n.9 (CA5, 1981); cf. Craig v. Harney, 331 U.S. 367 (1947).

In Reeves v. American Broadcasting Companies, Inc., 719 F.2d 602 (CA2, 1983), decided subsequent to the original submission of the instant petition, another panel of the Second Circuit held that fair reporting of a grand jury's investigation into practices of the entertainment industry was privileged under Cal.Civ.Code §47 as supported by cases interpreting the constitutional proscription of Amendment I.

Petitioner alleged that the action arose from Respondent's failure to comply with the requirements of the Hornblower's Provision, 18 U.S.C. §3332(a), 84 Stat. 924, and that the district court had jurisdiction pursuant to provisions located in 28 U.S.C. §§1331(a), 1343(4), 1361, 1391(e), and 2201. Complaint at ¶¶13-14, Appendix J, infra. Prayer for mandamus was predicated on allegations that:

The provisions of Title 18, United States Code, §3332(a) grant unto Plaintiff a "civil right" within the meaning of Title 28, United States Code, §1343(4); said provisions likewise impose upon Defendant a ministerial duty, Title 18, United States Code, §3332(a) encompassing in part a positive command which is free from doubt;

Complaint at ¶12, Appendix J, infra; that:

By his refusal to present Plaintiff and Plaintiff's investigation and evidence to the proper special federal grand jury, as is required by Title 18, United States Code, §3332(a), Defendant

has deprived Plaintiff's works of an element of their marketability, since in the absence of a certification of truthfulness, any responsible publisher must as a matter of law be hesitant to contract Plaintiff's works;

Complaint at ¶21, Appendix J, infra; and that:

By his refusal to present Plaintiff and Plaintiff's investigation and evidence to the proper special federal grand jury, as is required by Title 18, United States Code, §3332(a), Defendant has altered the conclusion of Plaintiff's fourth manuscript in a material way, which alteration Plaintiff asserts has deprived Plaintiff's work of its immortality; and if Defendant is not mandamusd to perform the ministerial act required by Title 18, United States Code, §3332(a), and requested of him by the Plaintiff, Plaintiff will suffer immediate and irreparable injury, for which damages at law are inadequate.

Complaint at ¶22, Appendix J, infra.

The complaint gave notice that the gist of these latter alleged injuries was founded in the law of libel. Complaint at

¶¶15-19, Appendix J, infra; see Conley v. Gibson, 355 U.S. 41, 47-48 (1957).

On 31 March 1981, the district court dismissed the complaint sua sponte and proffered in support a one-page memorandum. Appendix E, infra; see Merckens v. F.I. DuPont, Glore Forgan & Co., 514 F.2d 20 (CA2, 1975). Upon effort to amend, Respondent, relying upon Linda R.S. v. Richard D., 410 U.S. 614 (1973), interposed the defense of Executive privilege, asserting that the basic cause of the action rested upon a proposition lacking legal recognition and that want of the requisite nexus therefore existed between the injury alleged and relief sought. Petitioner in response argued that Respondent's invocation of prosecutorial discretion was premature, since a "prosecution" does not "commence" until after the initiation of a court proceeding by indictment or information, In re Grand Jury, January, 1969,

315 F.Supp. 662 (D.Md., 1970), and that presentment by grand jury is not an "indictment." United States v. Cox, 342 F.2d 167 (CA5, 1965), cert.den. sub nom. Cox v. Hauberg, 381 U.S. 935. Petitioner asserted an implied right of action under § 3332(a), see Universities Research Assn. v. Coutu, 450 U.S. 754, 768n.17 (1981), residing in the inherent conflict of interest entertained by "Respondent and his superiors," see United States v. serPico, 522 F.2d 41, 69 (CA2, 1975), in instituting further proceedings relating to the Hearst case.<sup>12</sup> See generally Miller v. Mallery, 410 F.Supp. 1283 (D.Ore., 1976).

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The Government's representatives long have taken the position that Patricia Hearst voluntarily joined the SLA's rebellion and that, of consequence, she was not telling the truth at her trial in San Francisco in 1976. Since Miss Hearst must be either credible or incredible (this not being one of those instances where a page of history is worth a volume of logic), the Government's representatives cannot take an official position which obliges them to say she is both. The Government

The district court denied Petitioner's motion. Appendix F, infra; see also Appendix K, infra (text of amended complaint). On 31 August 1981, Petitioner filed timely notice of appeal.

Prior to filing his appellate brief, Petitioner filed with the Second Circuit four procedural motions in an effort to amend his complaint (this time pursuant to 28 U.S.C. §1653, 62 Stat. 944) and also to certify to this Court the jurisdictional

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cannot oppose efforts by her to have her conviction reversed, see United States v. Morgan, 346 U.S. 502, 505 (1954); United States v. Cariola, 323 F.2d 180, 183 (CA3, 1963); United States v. Keogh, 391 F.2d 138 (CA2, 1968); Garrison v. United States, 154 F.2d 106, 107 (CA5, 1946), and at the same time support efforts by Petitioner which cannot but have the effect of discrediting her conviction. Such explains the plea of Executive privilege.

What a convenience that Respondent and his superiors have chosen to believe that position which "coincidentally" blocks all attempts to apportion at least some of the responsibility for what happened to Respondent or his predecessors! But, then, it should come as no surprise that bureaucracies prefer to pursue that course which, first of all, protects themselves.

question. This second amended complaint alleged jurisdiction to arise under the First and Fifth Amendments to the Constitution of the United States as well as under the Hornblower's Provision, with corresponding statutory authority to be found in 28 U.S.C. §§1331(a), 1343(4), 1361, 1391(e), and 2201. Standing to sue was alleged and predicated upon 5 U.S.C. §702 and Bivens v. Six Unknown Named Agents, Federal Bureau of Narcotics, 403 U.S. 388 (1971). Summarizing, the second amended complaint alleged that (1) Petitioner was directly and personally interested in obliging the statutorily required presentation by Respondent to the special federal grand jury, not only as witness, investigator, and private citizen but also as author and historian, publication of whose work and pursuit of whose career directly were and remain dependent upon the presentation, so that the presentation was and



is a matter "vital" to him; and (2) Respondent had a conflict of interest generated by his legal obligation both to protect the Government's case against efforts by Patricia Hearst to overturn her conviction, United States v. Hearst, 638 F.2d 1190 (CA9, 1980), cert.den. 451 U.S. 938; see note 12, p. 12, supra, and to attack the Government's case upon formal request by Petitioner, which conflict of interest was and remains sufficiently severe to imply to Petitioner a private right of action. See Appendix L, infra. Leave to amend again was denied, as was the motion to certify the question. See Appendix C, infra.

Upon rescheduling of the appeal, Respondent argued that the district court was correct in its actions because (A):

The provisions of 18 U.S.C. § 3332 that describe the 'powers and duties' of special grand juries neither create statutory civil right, nor confer an implied right of action in fa-

vor of people wanting to submit information to special grand juries,

and (B):

Appellant lacks standing because he has failed to establish that the requested relief will remedy any direct or certain injury caused by the disputed Government action.

Crim v. Hunter, #81-6177 (CA2), Brief and Addendum for Appellee at 4, 8. Petitioner contested this by analyzing jurisdiction, standing, cause of action, relief, and structure and history of the Hornblower's Provision. Id., Brief and Reply Brief of Appellant.

C. Opinion of the Panel.

The opinion and order of the court of appeals was to the following effect:

A private person has no standing to contest policy decisions of United States Attorneys when such a private person himself

neither is prosecuted nor threatened with prosecution. Linda R.S. v. Richard D., supra, 410 U.S. at 619. The statute invoked is a directive to the United States Attorney which does not confer standing. 18 U.S.C. §3332(a); Universities Research Assn. v. Coutu, supra, 450 U.S. at 770; Touche Ross & Co. v. Redington, 442 U.S. 560, 575-576 (1979); Cort v. Ash, 422 U.S. 66, 78 (1975). Because Petitioner must stand to profit directly from the relief he seeks, want of a nexus exists between injuries he alleges and the relief he seeks. Linda R.S. v. Richard D., supra, 410 U.S. at 618. The allegation of loss of marketability is not within the zone of interest protected by the Hornblower's Provision, Warth v. Seldin, 422 U.S. 490 (1975); Linda R.S. v. Richard D., supra; Association of Data Processing Services, Inc., v. Camp, 397 U.S. 150 (1970), and is indirect, speculative, and remote, Crim v. Hunter, supra, Opinion of Panel at 2. Thus, failure on the part of Petitioner to plead a judicially cognizable injury bars the second action upon the principle of res judicata. See Crim v. Bell et al., supra, Opinion of 10 April 1979.

Rehearing was sought en banc upon the proposition that the panel erred in failing to recognize a civil right possessed

by Petitioner the fruit of Congressional action in passing the Hornblower's Provision. Petitioner further pointed out that following the panel's analysis to its logical conclusion generated an insane consequence, at least under the facts supporting the instant action.<sup>13</sup> As Petitioner put it to the Second Circuit:

Plaintiff has difficulty with the proposition that the Supreme Court by the barest majority ever meant to substitute in plaintiffs for a specific right of procedure a general right to rebellion.

Crim v. Hunter, supra, Petition for Rehearing En Banc at 3.

The petition seeking rehearing was denied, see Appendix B, infra, and a further motion to recall mandate and allow amend-

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<sup>13</sup> Linda R.S. v. Richard D., supra, 410 U.S. at 619n.5; United States v. Hicks, 625 F.2d 216 (CA9, 1980), reh.den.; Orr v. Orr, 440 U.S. 268 (1979); accord Strauder v. State of West Virginia, 100 U.S. 303 (1880); see Application of American Broadcasting Companies, supra.

ment of pleadings, see Appendix M, infra, also was denied, see Appendix D, infra. Petitioner now seeks writ of certiorari to review these lower orders and opinions.<sup>14</sup>

### REASONS FOR GRANTING THE WRIT

#### A. Introduction.

In Branzburg v. Hayes, 408 U.S. 665 (1972), this Court considered the question: What was to be done when a news reporter witness to a crime refuses to talk to a grand jury convened to investigate that crime. The instant petition at its root might be said to be concerned with

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<sup>14</sup> A third amended complaint was filed with the district court on 01 November 1982 after the court granted yet another of Petitioner's procedural motions, this one filed pursuant to Rules 59(a) & 60(b), Fed.R.Civ.Pro. This proffered amended complaint is too long and far too complicated in its allegations and proofs to reproduce in the appendix to this petition; Complaint (as amended III) was referred by the trial court to the magistrate, who denied the motion to amend. See Brack v. Wells, 184 Md. 86, 40 A.2d 319, 156 A.L.R. 324 (1944).

the opposite side of that coin: What is to be done when a news reporter<sup>21</sup> witness to a possible crime wants to talk to a grand jury convened to investigate crime when the Government, the Executive, apparently prefers to turn its back on the matter. In Branzburg, this Court left little doubt where it stood in relation to the fundamental question. Said the Court:

Similar considerations dispose of the reporters' claims that preliminary to requiring their grand jury appearance, the State must show that a crime has been committed and that they possess relevant information not available from other sources, for only the grand jury itself can make this determination. The role of the grand jury as an important instrument of effective law enforcement necessarily

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Petitioner is an accredited historian with a degree in that art from the University of California. Complaint (as amended IV) at ¶3(a), Appendix M, infra. He was present for much of the trial of Miss Hearst, covered the trial of the Harrises, see 444 U.S. 862, for Rolling Stone, and subsequently worked for two years for a newspaper, the Waterbury (Ct.) Republican.

includes an investigatory function with respect to determining whether a crime has been committed and who committed it. To this end it must call witnesses, in the manner best suited to perform its task. "When the grand jury is performing its investigatory function into general problem areas . . . society's interest is best served by a thorough and extensive investigation." Wood v. Georgia, 370 U.S. 375, 392 [1962]. A grand jury investigation "is not fully carried out until every available clue has been run down and all witnesses examined in every proper way to find if a crime has been committed." United States v. Stone, 429 F.2d 138, 140 (CA2, 1970). Such an investigation may be triggered by tips, rumors, evidence proffered by the prosecutor, or the personal knowledge of the grand jurors. Costello v. United States, 350 U.S. [359,] at 362 [1956]. It is only after the grand jury has examined the evidence that a determination of whether the proceeding will result in an indictment can be made: \* \* \*

408 U.S. at 701-702 (emphasis added). This Court went on to observe that:

it is obvious that agreements to conceal information relevant to commission of crime have very

little to recommend them from the standpoint of public policy. Historically, the common law recognized a duty to raise the "hue and cry" and report felonies to the authorities.

408 U.S. at 696. In that at common law, a private individual had an unqualified right to appear before a properly convened grand jury and lay an indictment before it, Brack v. Wells, *supra*, 40 A.2d at 322, 156 A.L.R. at 328,<sup>22</sup> Petitioner initially must be acknowledged to be on the most firm ground in the proffering of this petition. U.S. Const., Amends. V, IX; see Complaint, ¶¶8-12, Appendix J, *infra*.

<sup>22</sup>

See also Blaney v. State, 74 Md. 153, 21 A. 547 (1891); In re Opinion to Governor, 62 R.I. 200, 4 A.2d 487 (1939); People v. Sheridan, 349 Ill. 202, 208, 181 N.E. 617, 619 (1932); People ex rel. Ferrill v. Graydon, Sheriff, 333 Ill. 429, 433, 164 N.E. 832, 834 (1928), reh.den. (1929); Miller v. State, 42 Fla. 266, 28 So. 208 (1900); State v. Baker, 33 W.Va. 319, 10 S.E. 639 (1889); Regina v. Russell, Car. & M. 247; Thompson & Merriam, *Juries* §609 (1882); I Stephen 244-250, 293, quoting 2 Russell 1778; see Burroughs, *Criminal Law and Procedure*, 51 Law.Q.Rev. 36, 50.



B. The Appellate Panel Has Not Performed the Analysis of Petitioner's Asserted Rights Which the Second Circuit in Its Previous Decisions Required.

Review of the order of the Second Circuit's panel entered with the clerk on 17 December 1982 establishes that the panel did not perform the analysis of Petitioner's asserted rights which the circuit in its previous decisions has required. Petitioner was cast in the role of a plaintiff contesting the validity of a penal statute or policies of a prosecuting authority when neither prosecuted himself nor threatened with prosecution. Crim v. Hunter, supra. But, even Respondent must admit that Congress may enact statutes creating legal rights, the invasion of which creates standing even though no injury exists without the statute. Linda R. S. v. Richard D., supra, 410 U.S. at 617n. 3; accord Warth v. Seldin, supra; Hardin

v. Kentucky Utilities Co., 390 U.S. 1 (1968); see Board of Supervisors v. Simpson, 36 Cal.2d 671, 227 P.2d 14 (1951). A gravamen of Petitioner's complaint is that a right secured to him by statute, regulation, custom, or prior agency practice is infringed by Respondent's inaction.<sup>23</sup>

Since the gist of the question of standing is whether an individual has alleged "such a personal stake in the outcome of the controversy" that the "concrete adverse-ness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions" is assured,<sup>24</sup> Baker

<sup>23</sup> Complaint, ¶¶9-12, 20, Appendix J, infra; Complaint (as amended), ¶¶10-12, 21, Appendix K, infra; Complaint (as amended II), ¶¶14-16, 25, Appendix L, infra; Complaint (as amended III), ¶¶15-17, 26; Complaint (as amended IV), ¶¶5(b,c,d), 6(a), 10 (a,e), Appendix M, infra.

<sup>24</sup> Federal courts have no power per se to review or annul Acts of Congress on constitutional or other grounds save when "the

v. Carr, 369 U.S. 186, 204 (1962); see United States v. Nixon, 418 U.S. 683, 696-697 (1974), the focus of the question of Petitioner's standing must be his asserted right to be presented to a special federal grand jury. Petition of Thomas, \_\_\_ Me. \_\_\_, 434 A.2d 503 (1981); accord Moose Lodge No. 107 v. Irvis et al., 407 U.S. 163 (1972); see Rogers v. Missouri Pacific Railroad Co., 352 U.S. 500 (1957). The

justification for some direct injury suffered or threatened, presenting a justiciable issue, is made to rest upon such an act. Then the power exercised is that of ascertaining and declaring the law applicable to the controversy. It amounts to little more than the negative power to disregard an unconstitutional enactment, which otherwise would stand in the way of the enforcement of a legal right. \* \* \* If a case for preventive relief is presented, the court enjoins in effect not the execution of the statute, but the acts of the official, the statute notwithstanding." Frothingham v. Mellon, 262 U.S. 447, 488 (1923); see also Baker v. Carr, *supra*, loc. cit.; Liverpool, N.Y. & P. Steamship Co. v. Commissioners of Emigration, 113 U.S. 33, 39 (1885); Marbury v. Madison, 1 Cranch 137 (1804); see Flast v. Cohen, 392 U.S. 83 (1968); see also Knowlton v. Moore, 178 U.S. 41 (1899).

Court is obliged to turn to the source of the right asserted to assess Petitioner's first claim of injury. Nash v. Califano, 613 F.2d 10 (CA2, 1980). The panel in its appellate opinion has not attempted this required analysis. Crim v. Hunter, supra.

C. Failure of the Appellate Panel to Perform Appropriate Analysis of Petitioner's Asserted Right Places Its Order of 17 December 1982 at Variance with Decisions of Other Circuits and at Least Two of the States.

As related, at common law, a private person had an unqualified right to appear before a properly convened grand jury and lay an indictment before it. In that the grand jury incorporated into the Constitution was the grand jury as it existed in England prior to colonization,<sup>31</sup> it must

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<sup>31</sup> United States v. Dionisio, 410 U.S. 1, 17n.15 (1973); In re Grand Jury, January,

follow that private persons in the United States retained the right to offer themselves before the grand jury to present evidence and information to it. United States v. Smyth, 104 F.Supp. 283, 295-298 (N.D.Cal., 1952); Wharton, Criminal Law (7th ed, 1874), §453 at 1:356; William Bradford, letter to Edmund Randolph, 20 Feb. 1794, Op. Atty. Gen. 22.

Petitioner is prepared to show that nothing in the development of the law during the last two hundred years has affected that right adversely. Granting that grand juries are creatures of statute,<sup>32</sup>

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1969, supra, 315 F.Supp. at 675; United States v. Cox, supra, 342 F.2d at 186 (Wisdom, J., concurring specially); United States v. Smyth, 104 F.Supp. 283, 289-290 (N.D.Cal., 1952); In re Opinion to Governor, supra; see People ex rel Ferrill v. Graydon, Sheriff, supra; Hurtado v. California, 110 U.S. 516, 556 (1884) (Harlan, J., dissenting); "The Grand Jury as an Investigatory Body," 74 Harv.L.Rev. 590.

<sup>32</sup>

United States v. Christian, 660 F.2d 892 (CA3, 1981); United States v. Fein,

and granting that there arose in the last century a movement rooted in public distrust of private prosecutions, Wharton, supra, §452 at 1:355, to restrict private access to grand juries, Act of 10 June 1872, c. 420, 17 Stat. 378,<sup>33</sup> it remains noticeable that by its clarifying amendment of 1948, 62 Stat. 770, 18 U.S.C. § 1504, 18 U.S.C.A. §1504, Congress repealed any and all prohibitions against proper petitioning of the grand jury by private parties for the purpose of appearing before it. Thus, the basic state of the law

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504 F.2d 1170, 1172 (CA2, 1974); In re Mills, 135 U.S. 263, 267 (1890); see Hurtado v. California, supra.

<sup>33</sup> See Charge to Grand Jury, #18,255, 30 F.Cas. 992, 2 Sawy. 667 (C.C.D.Cal., 1872); United States v. Kilpatrick, 16 F. 765 (W.D.N.C., 1883); 18 U.S.C. (1940) §243, 35 Stat. 1113; accord Brack v. Wells, supra; see Duke v. United States, 112 A.L.R. 317 (CA4, 1937), cert.den. 302 U.S. 685, mot.den. 302 U.S. 649, reh.den. 302 U.S. 775, mot.den. 302 U.S. 650; People v. Doss, 382 Ill. 307, 46 N.E.2d 984 (1943); People v. Parker, 374 Ill. 524, 30 N.W.2d 11 (1940), cert.den. 313 U.S. 560.

both in 1970 when the Hornblower's Provision was passed and today, see Merrill Lynch, Pierce, Fenner & Smith v. Curran, 456 U.S. 353, 378 (1982),<sup>34</sup> is no less than the state of the law as it existed in 1794. United States v. Tynen, 11 Wall. 88 (1870); see State v. Baker, *supra*, 10 S.E. at 640. Furthermore, by the language of 42 U.S.C. §1981, R.S. §1977, the right this Court long has recognized of grand jurors to present to their colleagues evidence of crime originating from their own knowledge, United States v. Calandra, 414 U.S. 338 (1974), would appear to extend equally to Petitioner subject only to such considerations as are necessary to assure regularity in the inquisitorial function. Hence, the language of the Hornblower's Provision, 18 U.S.C. §3332(a), when taken

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<sup>34</sup> See also Leo Sheep Co. v. United States et al., 440 U.S. 668, 669 (1979); United States v. Union Pacific Railroad Co., 91 U.S. 72, 79 (1875).

together with its legislative history,<sup>41</sup>  
 supports the proposition that this section  
 of the Code of Criminal Procedure, far

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<sup>41</sup> The Hornblower's Provision derives from a section of the original bill, S.30, first passed by the Senate on 23 January 1970, 2 U.S.Cong.& Adm.News 1970 at 4012, by a vote of 73 to 1, Cong.Rec. (House, 10 March 1970) at 6708. While the Senate Judiciary Committee in its report, No. 91-617, made no mention of the Hornblower's Provision, Cong.Rec. (Senate, 18 Dec. 1969) at 39906, the Department of Justice did offer its own analysis of the bill's sections regarding special grand juries. Relevant to the instant petition is the following:

Section 3324(c) [sic] provides that no person shall be deprived of opportunity to communicate to the foreman of a grand jury any information concerning any offense against the criminal laws of the United States alleged to have been committed within the district. Section 1504 of Title 18, United States Code, presently makes it an offense for anyone to attempt to influence the action or decision of any grand or petit juror upon any matter pending before it [sic] by a written communication. This provision is apparently intended to make it clear that no violation of this section is committed by a person who merely communicates to the foreman of a grand jury any information regarding any offense against the laws of the



from being merely a "directive" to the United States Attorney, Crim v. Hunter, supra, Opinion of Panel at 2, citing Uni-

United States. This provision could well encourage wider organized crime and we, therefore, support it. [Sic]

Cong.Rec. (Senate, 18 Dec. 1969) at 39911. (Petitioner will resist temptation to comment on the last sentence.) The House Judiciary Committee, under fire from civil-liberties groups (particularly with regard to §3333), made major revisions in Title I, and the other titles as well, with the result that §3324(c) of the bill which passed the Senate became the Hornblower's Provision of §3332(a). As a matter of procedure, Petition of Thomas, supra, the United States Attorney is interposed between the complaining witness and the special grand jury (this to allow the prosecutor to attach a professional recommendation which can weed obvious cranks), see United States v. Chanen, 549 F.2d 1306, 1311 (CA9, 1977), cert.den. 434 U.S. 835; Coppedge v. United States, 311 F.2d 128 (CA10, 1962), cert.den. 373 U.S. 946, but the House Report on the Act, No. 91-1549, 2 U.S.Cong.& Adm.News 1970 at 4014, see infra at note 43, makes it clear the interposition is ministerial, being a positive command which is free from doubt. Prarie Band of Tribe of Pottawatomie Indians v. Udall, 355 F.2d 364, 367 (CA10, 1966), cert.den. 385 U.S. 831; Board of Supervisors v. Simpson, supra, 227 P.2d at 17; see Hott v. Yarborough, 112 Tex. 179, 245 S.W. 676 (1922); Anderson v. Yungkau,

versities Research Assn., Inc., v. Coutu,  
supra, 450 U.S. at 770; Touche Ross & Co.  
v. Redington, supra, 442 U.S. at 575-576;

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329 U.S. 482, 485 (1947). And if there be any remaining doubt, Petitioner believes the words of Rep. (now Judge) Mikva of Illinois, a staunch opponent of the bill (see 2 U.S.Cong. & Adm. News 1970 at 4076-91), will allay them:

All of us I am sure have come across strange characters who are convinced that they have uncovered the scandal of the ages. They are people who are convinced that the entire history of this country was written in a conspiracy and that every elected official and anyone else in a newsworthy capacity is involved in a conspiracy to bring down the democracy. Under this bill the U.S. attorney [sic] must take as real every single complaint that is brought to him by any such person and present it to the grand jury. This really makes every U.S. attorney [sic] into a gossipmonger, because he has to take every loose tale or story and present it to the grand jury no matter how ridiculous it may be; then it is available to the grand jury to proceed from there.

Cong. Rec. (House, 06 Oct. 1970) at 35204-05. In response to Rep. Mikva's assertions, not one congressman stood to speak

and Cort v. Ash, supra, 422 U.S. at 78, in actuality is an incorporation into the creation of special federal grand juries

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in opposition. So, it must be presumed that the members of the House present on 06 October 1970 for this controversial debate knew exactly and fully approved of what they eventually voted for. Indeed, the very next day, Rep. McCulloch, the chairman, yielded three minutes to "a long-time member of the House Judiciary Committee," Rep. Cramer of Florida, who said:

Mr. Chairman, when we had kidnappings [sic] in America -- for instance, the famous Lindbergh case -- the American people demanded action and the Congress acted. They demanded that something be done to stop the heinous kidnaping [sic] of children in America. It was done. Kidnaping [sic] has almost come to a halt because of the action taken by the Congress at the demand of the people. I hope bombings will come to a similar halt. [An important title of the Act was Title IX, explosives control.] The radical revolutionaries in this country have as their intent and purpose the disruption of law and order in America, the killing of as they say "the pigs," meaning the policemen, and the tearing down and bombing of as they say "the pigsties," meaning, of course, the police headquarters and the jails.

of those historic features concerning private witnesses needed to make those juries truly "more independent of court and pro-

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Mr. Chairman, the time has come for Congress to act. I am delighted to see it is doing so, and in particular using the Lindbergh law pattern and saying to the bombers that we are going to put them out of business, and if they do not get out of business, the death penalty can be invoked if they kill someone in a bomb attack \* \* \* such as the graduate student at the University of Wisconsin who was killed in the bombing of the library of research facility [sic]. \* \* \*

Frankly, I believe it is a national plan. It is not just happening. I believe it is a national, planned program on the part of a very small number of radical revolutionaries who want to destroy our institutions in this country.

Cong. Rec. (House, 07 Oct. 1970) at 35305; see Jane Alpert, Growing Up Underground (New York: Wm. Morrow & Co., 1981). Rep. Cramer no doubt overstates the case -- the student unrest of the 1960's and 1970's was widespread and deep and generated a number of independently operating terrorist organizations allied (and often divided) by nothing more than a generally singular ideology --; however, such dilutes Petitioner's point not one little bit; The law (the intent behind which was Rep. Cramer's) requires Respondent to act.

secutor,"<sup>42</sup> and a counterbalancing of that incorporation with a mode of procedure designed to check those abuses which more recent history has taught may come with unrestricted access to grand jurors.<sup>43</sup> The

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<sup>42</sup> Cong.Rec. (House, 10 March 1970) at 6708 (Rep. Poff); Cong.Rec. (House, 06 Oct. 1970) at 35197 (Rep. McCulloch); id. at 35215 (Rep. Halpern); Cong.Rec. (House, 07 Oct. 1970) at 35290 (Rep. Poff); id. at 35311 (Rep. Flowers); id. at 35313 (Rep. Minish); id. at 35321 (Rep. Anderson); id. at 35328 (Rep. Meskill).

<sup>43</sup> "As contained in the Senate-passed version such special grand juries were largely independent of court control. Some witnesses opposed this aspect of independence from the courts. The House Judiciary Committee altered the Senate version so as to bring the special grand juries more under the control of the Federal courts. \* \* \* [T]he grand jury generally is thought of as an 'arm of the court.' The House Committee version recognizes that court control is desirable." Cong.Rec. (House, 07 Oct. 1970) at 35303 (Rep. Railsback).  
House Report No. 91-1549, 2 U.S.Cong.& Adm.News 1970 at 4014, in commenting on §3332(a), specifically declares:

Section 3332(a) makes it the duty of a special grand jury impaneled within any district to inquire into Federal offenses alleged to have been committed

language of the provision tracks very well with similar language to be found in 15 Me.R.S.A. §1256 (see Petition of Thomas, supra, 434 A.2d at 505); the State of Texas long has had a statute to similar effect, Hott v. Yarborough, supra, and thus the opinion of the panel of the Second Circuit conflicts at its foundation with opinions on the subject from these two States. See also 8 U.Chi.L.Rev. 561, 562n.4.

There are similar, though admittedly

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within the district. As amended by the committee, alleged offenses may be brought to the attention of the special grand jury by the court or by any attorney appearing on behalf of the United States for the presentation of evidence. Any such attorney who receives information of an alleged offense from any person must, if requested by that person, inform the grand jury of the alleged offense, the identity of the person who conveyed the information, and his own action or recommendation.

Id. at 4015 (emphasis added); see Application of Thomas, supra; cf. Hott v. Yarborough, supra; see further Anderson v. Yungkau, supra, loc. cit.

less direct conflicts at the federal level. The most authoritative opinion of the Northern District of California, United States v. Smyth, supra, loc. cit., and the most recent, relevant opinion of the Ninth Circuit, United States v. Chanen, supra, loc. cit. and at 1312-13, appear to be opposed diametrically on the question, with the Chanen position slowly making inroads into the opinions of the Southern District of New York. United States v. Chovanec, 467 F.Supp. 41, 43 (1979); see also United States v. Steel, 238 F.Supp. 580 (1965). This is most interesting, since Chanen cited for authority not only In re Subpoena of Persico, supra (a Second Circuit case not supportive of the proposition at all), but also United States v. Cox, supra, the four-opinion decision of a circuit which, after having been split, appears on the verge of rejecting United States v. Kilpatrick, supra (rendered pri-

or to Congress' 1948 amendment to 18 U.S.C. §1504), and siding with Judge Fee in Smyth. United States v. Cosby, 601 F.2d 754, 757-759 (1979). The Seventh Circuit tacitly has sided with the Fifth, Cawley v. Warren, 216 F.2d 74, 76 (1954), citing People ex rel. Ferrill v. Graydon, Sheriff, supra; likewise, the D.C. Circuit appears to be in harmony with Petitioner, Medical Committee for Human Rights v. S.E.C., 432 F.2d 659, 673-674 (1970), vac. and rem. for mootness 404 U.S. 403 (1972); accord Hale v. F.C.C., 425 F.2d 556, 565-566 (1970) (Tamm, J., concurring in judgment), an appearance slighted only slightly because the author of the leading case on the subject, see Office of Communication of United Church of Christ v. F.C.C., 425 F.2d 543, 546-547 (CADC, 1969), reh. en banc den. 425 F.2d 551, was cited in support by the panel in Chanen, 549 F.2d at 1311, citing Coppedge v. United States, supra.



These conflicts provide this Court with more than adequate reason to grant the writ and a golden opportunity to say authoritatively what the law is concerning how private citizens are to go about playing their role in the prosecution and suppression of crime. Cf. Parker v. People of Illinois, 332 U.S. 846 (1948).

D. Applying Broad Dicta of Linda R.S. v. Richard D. to the Facts of the Instant Action Generates Absurd Consequences and Fundamental Injustice.

Respondent's argument, accepted by the court below, that the instant action falls within the broad prohibition of Linda R.S. v. Richard D., supra, 410 U.S. at 619, when made upon the facts underlying the instant action's predication, supra at 1-8, generates absurd consequences and fundamental injustice. Linda R.S. v. Richard D. stands literally for the proposi-

tion that, to challenge prosecutorial policies, one deliberately must subject himself to prosecution, a fine theoretical argument based upon an appreciation of separation-of-powers doctrine -- except that under the current factual array, "separation of powers" becomes a covert catchphrase for justification of felony. 410 U.S. at 619n.5; United States v. Hicks, supra; Orr v. Orr, supra; accord Strauder v. State of West Virginia, supra; see Application of American Broadcasting Companies, supra. Such a "John Wayne" approach to the problem of law enforcement is precisely what the Ninth Circuit criticized in Finn v. United States, 219 F.2d 894 (1955), reh.den. 219 F.2d 903, mot.granted 219 F.2d 904, cert.den. 75 S.Ct. 583. The law's providing for acceptable substitutes for violence in the settling of disputes is an essential element of its civilizing function. Afro-American Publishing Co. v.

Jaffe, 366 F.2d 649, 660 (CA DC, 1966); accord Rosenblatt v. Baer, 383 U.S. 75, 91 (1966) (Stewart, J., concurring). Respect for the rules of due process are essential to securing the rights of all under a system of ordered liberty, and to preventing false deprivations. Marshall v. Jerrico, Inc., 446 U.S. 238 (1980); Application of Yamashita, 327 U.S. 1, 27 (1946) (Murphy, J., dissenting); United States v. Fein, supra, 504 F.2d at 1181; see Application of Yamashita, supra, 327 U.S. at 81 (Rutledge, J., dissenting).<sup>44</sup>

In the instant matter, the proper procedure is to oblige the Executive to assume responsibility for his properly discretionary acts. See Pugach v. Klein,

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<sup>44</sup> "[T]he proper response to an arguably illegal action is not lawlessness by judges charged with interpreting and enforcing laws. \* \* \* Our Constitution assures that the law will ultimately prevail, but it also requires that the law be applied in accordance with lawful procedures." Holtzman et al. v. Schlesinger, 414 U.S. 1304, 1315 (1973).

193 F.Supp. 630, 635 (SDNY, 1961). The construction currently afforded in effect allows the Executive to shield a (bogus) claim of insufficiency in the evidence with a(n equally bogus) claim of Executive privilege. Neither the courts of the Fifth Circuit nor the courts of Maryland tolerate such a proposition, United States v. Cox, supra, 342 F.2d at 185 (Brown, J., concurring specially); Ewell v. State, 207 Md. 288, 114 A.2d 66, 71 (1955). The Supreme Court should not, nor does Petitioner think it does, tolerate it either. Rules of procedure should not be designed so as to make men become "laws unto themselves," Olmstead v. United States, 277 U.S. 438, 485 (1928) (Brandeis, J., dissenting), and where the "unconstitutionality of the course pursued has now been made clear," the particular proposition advanced, that Executive control of the prosecutorial function extends to determination

of what a grand jury shall be allowed to hear, Crim v. Hunter, supra; Linda R.S. v. Richard D., supra, 410 U.S. at 619, needs to be abandoned. Cannon v. University of Chicago, 441 U.S. 677, 742 (1979) (Powell, J., dissenting), citing Erie R. Co. v. Tompkins, 304 U.S. 64, 77-78 (1938). This Court should grant certiorari to reconsider the breadth of the dictum laid down in Linda R.S. and the Second Circuit's extension of same to the important federal question of private access to special grand juries. Heflin v. United States, 358 U.S. 415, 416-417 (1959); see Hale v. Henkel, 201 U.S. 43, 63 (1906); Frisbie v. United States, 157 U.S. 160, 163 (1895).

E. Implied Rights of Action Lie under the Hornblower's Provision Where the Executive Entertains Conflicts of Interest.

It reasonably may be inferred from the language of the Hornblower's Provision

that Congress intended a private right of civil action to lie by implication for the statute's violation. The Provision focuses not only on the duties of the Government's attorney but also on the person making the request for presentation. This differs from statutes where implied right of action has not been found.<sup>111</sup> As Justice Oliver J. Carter, Sr., said, speaking for California's Supreme Court en banc:

That mandamus is the proper remedy is clear. As pointed out above, the district attorney must or shall bring an action to abate a public nuisance when so directed by the board of supervisors. Cod Civ.Proc. §731, supra; Govt.Code §26528. "Shall" is mandatory, Govt. Code §14, and certainly "must" is also. The writ of mandamus

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<sup>111</sup> Cf. Petition of Thomas, supra, 434 A.2d at 507 ("Evidence...may be offered to \* \* \*"); Board of Supervisors v. Simpson, supra, 227 P.2d at 15 ("\* \* \* such district attorney must bring such an action whenever directed by \* \* \*"); and Hott v. Yarrow, supra ("It shall be the duty \* \* \*"); with Cort v. Ash, supra, 422 U.S. at 68n.1 ("It is unlawful for \* \* \*").

issues " \* \* \* to compel the performance of an act which the law specifically enjoins, as a duty resulting from an office \* \* \*." Code Civ.Proc. §1085. The statutes, Code Civ.Proc. §731; Govt.Code §26528, specifically "enjoin" upon the district attorney "as a duty resulting from (his) office" the bringing of actions to abate public nuisances when directed by the board of supervisors. It may well be that where he is not directed by the board he has some discretion in the matter. Code Civ.Proc. §731; Stats.1913, p. 20, § 3, but plainly there is none where he is so directed. Moreover, in this case he refuses to exercise any discretion he might have as his failure to act is based solely upon his claim that the duty rests upon the county counsel; thus mandamus would be proper. See *Hollman v. Warren*, 32 Cal.2d 351, 196 P.2d 562.

Ordinarily a district attorney cannot be compelled by mandamus to prosecute a criminal case, see *Boyne v. Ryan*, 100 Cal. 265, 34 P. 707; 55 C.J.S., Mandamus, §69(f), but here the mandatory duty to prosecute is imposed upon him and the statute leaves him no discretion to exercise. In *Boyne v. Ryan*, supra, the court seemed to feel that mandamus would not lie because the court could not supervise the many ramifications of the prosecution of the action.

In the instant case, however, the district attorney is not refusing to prosecute the action for any reason other than his view that he has no authority under the law. Under these circumstances we may presume he will diligently prosecute once he has commenced the action. See Code Civ.Proc., §1963(15).

It is ordered that a peremptory writ of mandamus issue as prayed.

Board of Supervisors v. Simpson, supra,  
227 P.2d at 17 (emphasis added).<sup>112</sup>

Notice Justice Carter distinguishes between "commencing" the action and "prosecuting" the action (which of course includes discretion to seek dismissal).

[W]hen there is no clear congressional intent contrary to

<sup>112</sup> Cf. People v. Municipal Court, 27 Cal. App.3d 193, 103 Cal.Rptr. 645, 66 A.L.R.3d 717 (1972) (appointment by court of private attorney to serve as "special prosecutor" held an invasion of legitimate discretionary reserve of Executive and violation of separation-of-powers doctrine); see United States v. Cox, supra; see also United States v. Nixon, supra, 418 U.S. at 694-696; Inmates of Attica Correctional Facility v. Rockefeller, 477 P.2d 375 (CA2, 1973).



the implication of private civil remedies, the adequacy of a statute's express [sic] remedies (or alternatively, the necessity of implied private ones) must be determined according to whether those express [sic] remedies insure the full effectiveness of the congressional purpose underlying the statute. In this sense, when the statute in question seeks to protect the individual's interest, it is not enough for it to have some enforcement mechanisms; the initial question is whether the statute's protection might be enhanced by allowing private civil relief.

Stewart v. Traveler's Corporation, 503 F.2d 108, 112 (CA9, 1974)(emphasis original).

In the absence of a clear congressional intent to the contrary, the courts are free to fashion appropriate civil remedies based on the violation of a \* \* \* statute where necessary to insure the full effectiveness of the congressional purpose.

Burke v. Compania Mexicana de Aviacion, S. A., 433 F.2d 1031, 1033 (CA9, 1970).

Under Cort [v. Ash, supra], a private remedy should not be im-

plied if it would frustrate the underlying purpose of the legislative scheme. On the other hand, when that remedy is necessary or at least helpful to the accomplishment of the statutory purpose, the Court is decidedly receptive to its implication under the statute.

Cannon v. University of Chicago, supra,  
441 U.S. at 703.

Where the interest asserted by the plaintiff is within the class that the statute was intended to protect, the harm of the type the statute was intended to forestall and the statutory criminal penalties inadequate to fully protect the asserted interest, a civil action \* \* \* arises by implication.

Burke v. Compania Mexicana de Aviacion, S. A., supra, 433 F.2d at 1034.

Such precisely is the point Petitioner raises by citing Miller v. Mallery, 410 F.Supp. 1282 (D.Ore., 1976). How can the purpose of the Hornblower's Provision be accomplished, absent implication of private enforcement actions, when the law in-

terposes between Petitioner and the special grand jury the very individual whose legal job it is to frustrate the prosecution of his client or its employees? How can the purpose of the Hornblower's Provision be accomplished, absent private enforcement actions, when the law obliges Respondent both to secure a person's condemnation before society and breach a wall protecting that security? There is no answer; this cannot be done.

It must be admitted that there is a certain appeal to Mr. Justice Powell's dissent to Cannon, 441 U.S. at 730, at least to this writer. "Sir James Jeans says what he means," and Petitioner does not see why Congress should not be obliged to assume the same responsibility;<sup>113</sup> however,

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<sup>113</sup> Petitioner currently is involved in litigation with the Internal Revenue Service over several important constitutional questions centered about this very issue. Crim v. Egger, Commissioner of Internal Revenue, No. 21268-82 (T.C.).

the Court is not writing on a blank slate on this matter, and it remains a controlling fact that, at the time Congress created by statute the special grand juries, see Merrill Lynch, Pierce, Fenner & Smith v. Curran, supra, loc. cit., Congress was operating under the aegis of J.I. Case Co. v. Borak, 377 U.S. 426 (1964). See Cannon, supra, 441 U.S. at 718 (Rehnquist and Stewart, JJ., concurring); see also 441 U.S. at 743n.14 (Powell, J., dissenting). Upon the question of implied right of action under the Hornblower's Provision, the record of Congressional intent is as sparse as it is because, in the context of the times, there was no reason for it to be otherwise. Justice Powell is critical of the Cort test, Cannon v. University of Chicago, supra, 441 U.S. at 739-747; see Cort v. Ash, supra; however, even Justice Powell acknowledges that cases involving rights secured by 42 U.S.C. §1981 are

among those limited exceptions where he considers implication of private action appropriate. 441 U.S. at 736. It is clear from the language of the Hornblower's Provision, §3332(a), that §1981-style implication deserves consideration. Employment within the Hornblower's Provision of phrases such as "[a]ny such attorney," "any other person," and "such other person" makes "irresistible" the conclusion that Petitioner is within the "zone of interest" protected by the statute. Cannon v. University of Chicago, supra, 441 U.S. at 689; Texas & Pacific Co. v. Rigsby, 241 U.S. 33, 40 (1916).

There can be no doubt that, recently, this Court has considered cases involving implied rights of action to be among those most fit for review.<sup>114</sup> A grand jury being

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<sup>114</sup> See e.g. Universities Research Assn. v. Coutu, supra, 450 U.S. at 767; Trans-america Mortgage Advisors, Inc., v. Lewis, 444 U.S. 11, 14 (1979); Touche Ross & Co.

an independent investigative body upon which the conclusions of the Attorney General are not binding, United States v. Cox, supra, 342 F.2d at 181 (Rives, Gewin, and Griffin B. Bell, JJ., concurring in part and dissenting in part), citing United States v. Thompson, 251 U.S. 407 (1920), cases which hold that a contracting agency retains the primary responsibility for investigating violations, Universities Research Assn. v. Coutu, supra, are not analogous and therefore of no precedential value. The Court should grant certiorari to consider whether an implied right of action lies under the Hornblower's Provision, and if so, what reliefs may be sought. Rule 17.1(c), S.Ct. Rules.

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v. Redington, supra, 442 U.S. at 562; see further Cannon v. University of Chicago, supra, 441 U.S. at 680, 730; Cort v. Ash, supra, 422 U.S. at 74; see also Davis v. Passman, 442 U.S. 228, 230 (1979).

F. The Courts Below Erred by Denying Petitioner's Motion to Amend Complaint.

It appears the reason the courts below erred in dismissal of Petitioner's complaint is that they focused on Petitioner's second claim of injury to the detriment of the first. The original complaint, Appendix J, infra, failed to allege a sufficient nexus between the second claim of injury and the relief sought. Linda R.S. v. Richard D., supra. Petitioner attempted to remedy this defect by amendment, and it respectfully is submitted that Complaint (as amended III) and Complaint (as amended IV), Appendix M, infra, satisfy the objections of trial and appellate courts. Complaint (as amended III) technically still is before the trial court, it having been rejected by the magistrate but not by the judge.<sup>121</sup> Complaint (as amended IV), Ap-

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<sup>121</sup> Petitioner filed exception to the magistrate's ruling upon which Judge Daly

pendix M, infra, was rejected by the court of appeals in its last order. Appendix D, infra. It is to be noted, however, that the court of appeals long has been on notice concerning the substance of Petitioner's allegations. Crim v. Hunter, supra, Appendix A, infra; see Appendix H, infra.

Construing Petitioner's inartful pleading liberally, as Haines v. Kerner, 404 U.S. 519, 30 L.Ed.2d 652, 92 S.Ct. 594, instructs the federal courts to do in pro se actions, it states a cause of action.

Boag v. MacDougall, 70 L.Ed.2d 551 (1982). Depriving Petitioner of access to literary markets where Petitioner asserts an interest in those markets, Complaint at ¶¶4, 15, 17-19, 20, 21-22, Appendix J, infra, is an injury in fact. Ludlow Corporation v. Securities and Exchange Com'n., 604 F.2d 704, 706-707 (CA DC, 1979). And as already no-

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never ruled; however, recently, the clerk returned the proffered amended complaint. RBC, 20 Dec. 1983.



ted, use of "any other person" within the Hornblower's Provision includes "any historian" and thus places Petitioner squarely within the zone protected by the statute. Petition, supra at 51. Interdiction of Petitioner's career certainly is the kind of injury the Fifth Amendment was designed to protect against, accord Schwartz v. Board of Bar Examiners, State of New Mexico, 353 U.S. 232 (1957); Meyer v. State of Nebraska, 262 U.S. 390 (1923); furthermore, Petitioner's injury is all the more severe for touching First Amendment rights as well. Perry v. Sindermann, 408 U.S. 593 (1972). The court of appeals' focusing on the question of nexus seems to this Petitioner to be shaving the law very fine to hold that the original complaint pleads a speculative rather than a direct injury. Petitioner alleged a right to have his accusations tested for truthfulness by the grand jury. Complaint at ¶20,

Appendix J, infra. Almost all of the persons against whom Petitioner chooses to level charges are public officials or public figures, and given the position taken by this Court in New York Times Co. v. Sullivan, 376 U.S. 254 (1964), and its progeny, a good case can be made that Petitioner benefits directly from being allowed to "put his money where his mouth is." Thus, under the proffered amended complaints, Petitioner does have requisite standing and a cause of action under the First and Fifth Amendments. Davis v. Passman, supra, 442 U.S. at 234-244.<sup>122</sup>

In any event, 28 U.S.C. §1653, 62 Stat. 944, allows amendment of pleadings upon terms in the appellate courts to correct defective allegations of jurisdiction. Petitioner anticipates that, after reading

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<sup>122</sup> The Second Circuit, sitting in diversity and applying California's law "as would the California Supreme Court" held in accord with Petitioner in Reeves v. American Broadcasting Companies, supra.

this little document, at least some members of this Court may have trouble reconciling Petitioner's pro se status with the status asserted by a marginally literate inmate of the Arizona Department of Corrections, see Boag v. MacDougall, supra; however, neither Boag nor Haines v. Kerner cited in support establish any kind of "sliding scale" against which non-certified pleaders are to be measured. Either one is admitted to practice or not; no other valid test of a man's legal knowledge currently is cognizable before the courts.<sup>123</sup> Petitioner agrees that there is something to be said for requiring those who bring serious charges to demonstrate some legal knowledge or otherwise show that they are not cranks; however, as this Court previously has observed:

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<sup>123</sup> Some paralegals know more about some aspects of the law than do some lawyers; but, no one to date has suggested seriously the qualifying of lawyers by training them to be paralegals.

We cannot construe \* \* \* any other one of the Federal Rules as compelling courts to summarily dismiss, without any answer or argument at all, cases like this where grave charges of fraud are shown by the record to be based on reasonable beliefs growing out of careful investigation. The basic purpose of the Federal Rules is to administer justice through fair trials, not through summary dismissals as necessary as they may be on occasion. These rules were designed in large part to get away from some of the old procedural booby traps which common-law pleaders could set to prevent unsophisticated litigants from ever having their day in court. If rules of procedure work as they should in an honest and fair judicial system, they not only permit, but should as nearly as possible guarantee that bona fide complaints be carried to an adjudication on the merits. \* \* \* The serious fraud charged here, which of course has not been proven, is clearly in that class of deceitful conduct which the federal securities laws were largely passed to prohibit and protect against. \* \* \* The dismissal of this case was error.

Surowitz v. Hilton Hotels Corporation, 383 U.S. 363, 373-374 (1966). It now has been more than five years since the first com-

plaint, Crim v. Bell et al., supra, was filed and as yet no defendant has even been compelled to admit or deny the wrongdoings charged. All should be. Petitioner's complaint is not res judicata,<sup>124</sup> nor is it moot.<sup>131</sup> This Court being able to

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<sup>124</sup> Estevez v. Nabers, 219 F.2d 321, 323 (CA5, 1955); State v. California Packing Corp., 105 Utah 191, 145 P.2d 784 (1944); United States v. Glidden Co., 119 F.2d 235 (CA6, 1941); Restatement of Judgments §50, comment (c)(1942); see The Evergreens v. Nunan, 141 F.2d 927 (CA2, 1944), cert.den. 323 U.S. 720. Petitioner's effort to amend so as to include the current United States Attorney as party defendant, Complaint (as amended III); Complaint (as amended IV), Appendix M, infra, would violate res judicata on all claims asserted as to him. United States v. Lueros, 243 F.Supp. 160, 168-169 (N.D.Iowa, 1965), cert.den. 382 U.S. 956.

<sup>131</sup> Since special federal grand juries also can issue reports, 18 U.S.C. §3333, and since the matter under consideration culminated in a felony murder, see United States v. Soliah, supra, expiration of the five-year period governing crimes asserted to have been committed against Miss Hearst, see 18 U.S.C. §3281, 62 Stat. 827, could not affect the instant action whatsoever, especially since under the law of the instant action, any action by the grand jury is incidental and irrelevant. Linda R.S. v. Richard D., supra, 410 U.S. at 619.

exercise appellate jurisdiction upon this cause, 28 U.S.C. §1254(1); U.S. Const., Art. III, §2, cl. 2, at minimum it should grant certiorari,<sup>132</sup> declare to Petitioner exactly what it wants,<sup>133</sup> and allow the complaint to be amended to its satisfaction. Warth v. Seldin, supra, 422 U.S. at 501-502. Certainly, it ought to make sufficient inquiry to assure itself whether it or the courts below it, in deciding the case of Miss Hearst, were targets or victims of a fraud destructive to the integrity of the criminal-justice system. The tripartite system of government established under the Constitution placed the purse in the hands of the Legislature, the sword

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<sup>132</sup> Merrill Lynch, Pierce, Fenner & Smith v. Curran, supra, 456 U.S. at 356; Simpson v. United States, 435 U.S. 6, 9 (1978); United States v. Chavez, 416 U.S. 562, 567-569 (1974); Prince v. United States, 352 U.S. 322, 324-325 (1957).

<sup>133</sup> Ballou v. General Electric Co, 393 F.2d 398 (CA1, 1968); see Nagler v. Admiral Corp., 248 F.2d 319, 322 (CA2, 1957).

in the hands of the Executive, and reserved to the Judiciary the power solely of its moral sanction.<sup>134</sup> That sanction is not going to be worth all that much if this or any court allows its justice to satisfy not even the appearance of justice. Cf. Marshall v. Jerrico, Inc., supra, 446 U.S. at 242-243.<sup>141</sup>

#### G. Conclusion.

Petitioner believes he has stated

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<sup>134</sup> Cannon v. University of Chicago, supra, 441 U.S. at 743n.15 (Powell, J., dissenting); Baker v. Carr, supra, 369 U.S. at 267 (Frankfurter, J., dissenting); Hamilton, The Federalist, No. 78; see also United States v. Calandra, supra, 414 U.S. at 359 (Brennan with Douglas and Marshall, JJ., dissenting); Terry v. Ohio, 392 U.S. 1, 12-13 (1968).

<sup>141</sup> See e.g. Sweat v. State, 90 Ga. 315, 17 S.E. 273 (1893); Tipton v. State, 23 Okl.Crim. 86, 212 P. 612 (1923); United States v. Ingalls et al., 73 F.Supp. 76 (S.D.Cal., 1947); cf. United States v. Hearst, supra; see also United States v. Shackney, 333 F.2d 475, 486 (CA2, 1964); United States v. McClellan, 127 F. 971 (S.D.Ga., 1904); Peonage Cases, 123 F. 671, 682-683 (M.D.Ala., 1903).


more than adequate grounds to justify this Court's granting of the requested writ.

He apologizes for the length of this petition, for he knows the time of the Court is scarce and needs to be economized; however, the questions presented are most serious, not just to Petitioner in his person but as general propositions of law.

First and Fifth Amendment rights, or the access of private persons to or official control of federal grand juries, are matters which concern large numbers of citizens and non-citizens alike subject to the jurisdiction and sovereignty of these United States. For all of the above-mentioned reasons, Petitioner respectfully submits that the writ should be granted.

Cf. Boag v. MacDougall, supra, 70 L.Ed.2d at 554-555 (O'Connor, J., concurring; Rehnquist, J., with Burger, C.J., and White, J., dissenting); see Hagans v. Lavine, 415 U.S. 528, 533 (1974).



  
Robert Brian Grim, pro se

Robert Brian Crim, pro se,  
32 Pierce Lane,  
Naugatuck, Ct., 06770.  
Tel. (203) 729-6119.

### Proof of Service

State of Connecticut : ss  
County of New Haven :

I, Robert Brian Crim, Petitioner in the above-entitled action, having been duly sworn according to law, do depose that I am the Petitioner in the above-entitled action, and that I caused to be served upon Barry K. Stevens and the Solicitor General of the United States of America 3 copies apiece of the above printed brief and appendices thereto by mailing same to

them in a first-class-postage-prepaid wrapper, one addressed to:

AUSA Barry K. Stevens,  
United States Attorney's Office.,  
915 Lafayette Blvd.,  
Bridgeport, Ct., 06604.

and the other addressed to:

Solicitor General of the  
United States,  
Department of Justice,  
Washington, D.C., 20530.

which mailings were effected on the \_\_\_\_th  
day of January, 1984.

I did prepare and have read the foregoing affidavit and swear that it is true and correct to the best of my knowledge, information, and belief. I understand that a false statement made by me in the above affidavit could subject me to penalties for perjury.

Respectfully submitted this \_\_\_\_th  
day of January, 1984,

---

Robert Brian Crim, pro se,  
32 Pierce Lane,  
Naugatuck, Ct., 06770.  
Tel. (203) 729-6119.

Sworn to and subscribed  
before me this \_\_\_\_<sup>th</sup> day  
of January, 1984.

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Clerk  
United States District Court,  
District of Connecticut.

## APPENDIX

Appendix A:

Opinion and Order  
of the  
United States Court of Appeals  
for the  
Second Circuit.

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the 17th day of December, one thousand nine hundred and eighty-two.

Present: Hon. Ellsworth A. Van Graafeil-  
and,  
Hon. James L. Oakes,  
Hon. Thomas J. Meskill,  
Circuit Judges.

Robert Brian Crim,	)	
	)	
Appellant,	)	
	)	
v.	)	81-6177
	)	
G. William Hunter, United States	)	
	)	
Attorney for the Northern	)	
	)	
District of California,	)	
	)	
Appellee.	)	

ORDER

This is an appeal from a judgment entered on March 31, 1981 by the United States District Court for the District of Connecticut. T.F. Gilroy Daly, Judge, dismissing this complaint sua sponte on the grounds that the court was without subject matter jurisdiction inasmuch as the plaintiff lacked standing. On July 2, 1981, that court further denied Crim's motion for vacation of judgment, leave to amend complaint, and new trial.

Appellant Crim, a private citizen, sought to compel Appellee Hunter, a United States Attorney, to submit Crim's material to a Special Grand Jury convened under Chapter 216 of the United States Code of Criminal Procedure. He asserted an implied private cause of action under 18 U.S.C. §3332(a), which describes the powers and duties of such grand juries.

A private person who is neither prosecuted nor threatened with prosecution

has no standing to contest policy decisions of the United States Attorney, Linda R.S. v. Richard D., 410 U.S. 614, 619 (1973), nor does 18 U.S.C. §3332(a) create standing. A directive that the United States Attorney receive, make a recommendation, and if requested forward information from any person to a special grand jury does not create a private right of action in the absence of congressional intent. Universities Research Ass'n., Inc., v. Coutu, 450 U.S. 754, 770 (1981); see also Touche Ross & Co. v. Redington, 442 U.S. 560, 575-76 (1979); Cort v. Ash, 422 U.S. 66, 78 (1975).

Crim's complaint also sought declaratory and compensatory relief; he alleges "loss of marketability" of papers that he might publish in the future showing that Patricia Hearst was deprived of her constitutional right to a fair trial, and a connection with the Iranian hostage crisis.



Publication, he states, may subject him to liability for libel; Crim wishes to filter his materials through the Grand Jury on the theory that he can thereby avoid a future libel action. Reply Brief at 15-17.

Crim fails to show how the remedy he seeks could prevent the speculative and remote injury he claims, Linda R.S. v. Richard D., 410 U.S. 614, 618 (1973). The jurisdiction of this court extends only to cases and controversies. U.S. Constitution Art. III. Even when a statute expressly or impliedly creates a private cause of action -- which is not the case here -- a plaintiff must allege injury in fact to an interest within the zone of interests protected by the statute deemed violated by executive conduct. Warth v. Seldin, 422 U.S. 490 (1975); Linda R.S. v. Richard D., supra; Association of Data Processing Service Organizations, Inc., v. Camp, 397 U.S. 150 (1970). We take note

that Crim has previously had an opportunity to present his claim of a judicially cognizable injury. See Crim v. Bell, No. 78-2132 (2d Cir., Apr. 10, 1979), affirming district court's judgment that Crim lacked standing in, inter alia, a mandamus action to Hunter and Grand Jury to inquire into Crim's materials. Where lack of standing is predicated not only on a statutory analysis, but also upon the plaintiff-appellant's failure to plead a judicially cognizable injury, the doctrine of res judicata bars relitigation of the claim.

The district court correctly dismissed Crim's complaint for lack of jurisdiction and the judgment is hereby affirmed.

s/James L. Oakes  
s/Ellsworth A. Van Graafeiland  
s/Thomas J. Meskill,

Circuit Judges.

Appendix B:

Order of the  
United States Court of Appeals  
for the  
Second Circuit.

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the 8 day of March, one thousand nine hundred and eighty-three.

Present:

Hon. James L. Oakes,  
Hon. Ellsworth A. Van Graafeiland,  
Hon. Thomas J. Meskill,  
Circuit Judges.

Robert Brian Grim,  
Appellant,

v.

81-6177

G. William Hunter, United States  
Attorney for the Northern District  
of California,  
Appellee.

ORDER

Appellant, pro se, has moved for leave to file a motion for rehearing out of time which is hereby granted. He has also petitioned for rehearing with a suggestion that the rehearing be heard en banc, and

this petition is hereby denied without prejudice to the application that the petition be heard en banc. He has also applied for leave to file a supplemental memorandum and that application is hereby granted.

(s) James L. Oakes,

(s) E.A. Van Graafeiland,

(s) Thomas J. Meskill,

Circuit Judges.

Appendix C:

Order of the  
United States Court of Appeals  
for the  
Second Circuit,  
27 January 1982.

UNITED STATES COURT OF APPEALS  
for the  
SECOND CIRCUIT

Robert Brian Crim  
v.  
G. William Hunter, U.S. Attorney.

)  
) 81-6177  
)

IT IS HEREBY ORDERED that the motion  
for vacation of judgment; leave to amend  
complaint; and new trial, be and it hereby  
is denied.

s/Thomas J. Meskill, U.S.C.J.

s/Richard J. Cardamone, U.S.C.J.

1/27/82 s/James S. Holden, U.S.D.J.\*

\* Sitting by designation.

Appendix D:

Order of the  
United States Court of Appeals  
for the  
Second Circuit.



UNITED STATES COURT OF APPEALS

for the

SECOND CIRCUIT

Robert Brian Crim,

Plaintiff-Appellant,

v.

G. William Hunter, United

States Attorney,

[Defendant-Appellee.]

No. 81-6177

IT IS HEREBY ORDERED that the motion to recall mandate, vacate judgment, allow amendment of pleadings, and grant new trial thereon be and it hereby is denied.

s/James L. Oakes,

s/Ellsworth A. Van Graafeiland,

May 19, s/Thomas J. Meskill,

1983. Circuit Judges.

Appendix E:

Opinion and Order  
of the  
United States District Court  
for the  
District of Connecticut.

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

ROBERT BRIAN CRIM,

Plaintiff,

-vs-

Civil No. N 81-150

G. WILLIAM HUNTER,  
United States Attorney  
for the Northern Dis-  
trict of California,

Defendant.

Plaintiff, "an historian", requested of the defendant that he present to a federal grand jury evidence in his possession which he believes tends to prove that a number of criminal offenses were committed against the United States between August 21, 1973 and February 1, 1979. Having never received a reply from the defendant to his letter of February 13, 1981 the plaintiff claims that the defendant has failed to discharge his duty pursuant to 18 U.S.C. § 3332(a) thereby denying

plaintiff his right to have his allegations tested for their veracity and has materially damaged the plaintiff by impeding the marketability of his manuscript which addresses the criminal activity he seeks to have investigated.

"Whatever merit there may be to plaintiff's [underlying] claims he has alleged nothing that entitles him to bring his suit in a federal court." Sohlberg v. Castor, Dkt. No. B-74-469 (D.Conn., Jan. 14, 1975)(Newman, J.). Title 18 U.S.C. §1332(a) confers no private right of action to seek the relief requested.

Accordingly, the complaint is dismissed, sua sponte, for lack of jurisdiction.

Dated at Bridgeport, Connecticut,  
this 31st day of March 1981.

(s) Thurnby Daly  
T.F. Gilroy Daly  
United States District  
Judge.

Appendix F:

Minute Order  
of the  
United States District Court  
for the  
District of Connecticut.

Upon Petitioner's motion made before the United States District Court for the District of Connecticut and seeking vacation of judgment, leave to amend pleadings, and new trial, the Hon. T.F. Gilroy Daly affixed the following endorsement:

July 2, 1981--DENIED. Plaintiff's amended complaint does not cure the jurisdictional defects found by this court in its ruling of March 31, 1981 nor those noted by the Government in its response filed May 15, 1981. See also Crim v. Griffin Bell et al, No. N-78-135 (D.Conn. 1978)(Newman, J.).

(s) Thurnby Daly  
T.F. Gilroy Daly,  
U.S. District Judge.

Appendix G:

Judgment and Mandate

UNITED STATES COURT OF APPEALS  
SECOND CIRCUIT

At a stated term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court-house, in the City of New York, on the twenty-third day of March, one thousand nine hundred and eighty-three.

---

ROBERT BRIAN CRIM,

Appellant,

v.

No. 81-6177

G. WILLIAM HUNTER, UNITED

STATES ATTORNEY for the

NORTHERN DISTRICT OF CAL-

IFORNIA,

Appellee.

---

A petition for rehearing containing a suggestion that the action be reheard in banc having been filed herein by appellant, Robert Brian Crim, pro se, and the



panel that heard the appeal having denied said petition in an order filed on March 8, 1983.

It is further noted that the suggestion for rehearing in banc has been transmitted to the judges of the court in regular active service and to any other judge on the panel that heard the appeal and that no such judge has requested that a vote be taken thereon.

A. Daniel Fusaro, Clerk  
by  
s/Francis X. Gindhart,  
Chief Deputy Clerk

Appendix H:

Reply Brief of Appellant  
at 15-17.

B. Appellee Has Not Shown That  
Appellant Lacks Standing  
for Failing to Establish a  
Nexus Between Injury Al-  
leged and Relief Sought.

Plaintiff alleged loss of marketabi-  
lity in his works the result of Defendant's  
apparent failure to present Plaintiff and  
Plaintiff's investigation to the special  
federal grand jury. The trial court cor-  
rectly found this to be an "injury in  
fact." Ludlow Corporation v. Securities  
and Exchange Com'n., 604 F.2d 704 (CA DC,  
1979). Appellee's objections, see Brief  
of Appellee at 9, are totally sans merit.

Allegation of loss of marketability  
was rooted in the law of libel. Plaintiff  
alleged that Patricia Hearst was not guil-  
ty of the crimes for which she was charged  
and convicted and also alleged that the  
conviction appeared fraudulent. Finally,  
Plaintiff alleged that no insanity was

present to account for Miss Hearst's behavior; thus, someone, somewhere had to be guilty.

Patricia Hearst's innocence may be argued as a matter of law rather than sympathy by "closing the door" upon the possibility of her escaping her abductors. Cf. United States v. Chapman, 455 F.2d 746 (CA5, 1972), with State v. Kearns, 27 N.C. App. 354, 219 S.E.2d 228 (1975), cert.den. 289 N.C. 300, 222 S.E.2d 700. On the question of "brainwashing," that is not a defense per se but may be invoked to explain why an individual at a certain time interpreted the data of reality in a certain way. It being a legal principal that one who reasonably perceives his life to be in danger may act upon appearances, it becomes necessary to show only that Miss Hearst was fearful both of the SLA and the USA, and that her fear of each was "reasonable" within the context of her

abilities to perceive reality. Toward this end, marshaling of all the extra-judicial remarks made by such as Atty. Gen. William Saxbe certainly is material. But, to say that William Saxbe incited a kidnapping victim to commit criminal acts is to say that William Saxbe, not Patricia Hearst, is the criminal. Such is a libelous statement, unless true.

Attorneys General and other such officials come under the rule set down in New York Times Co. v. Sullivan, 376 U.S. 254, 84 S.Ct. 710 (1964), and must prove "actual malice" to effect recovery under the law of libel. Plaintiff's circumstances are similar to a degree to the circumstances attending Curtis Publishing Co. v. Butts, 388 U.S. 130, 87 S.Ct. 1975 (1967), reh.den. 88 S.Ct. 11, 13. The degree of similarity at this point depends upon how credible a jury finds Plaintiff. However, fortuitious circumstances allow

Plaintiff to pass between the horns of his dilemma by writing, at least to a degree, about himself (a tactic not uncommon among those who wrote books about the Hearst case). Plaintiff, the witness, is privileged to say what he thinks to the grand jury and to answer truthfully any question which it might care to ask him. Marsh v. Commercial and Savings Bank of Winchester, Virginia, 265 F.Supp. 614 (W.D.Va., 1967). Plaintiff, the reporter, is privileged to report fairly judicial proceedings. Craig v. Harney, 331 U.S. 367, 374 (1947). What happens after that really is not Plaintiff's problem. If the President chooses publicly not to prosecute, then so what? If the grand jury chooses not to present, then so what? If the United States Attorney chooses not to recommend, then so what? Plaintiff fails to see Defendant's point.

Plaintiff does acknowledge that the

original and first amended pleadings in the district court fail properly to plead jurisdictional facts on this portion of the complaint, since the case here arises not solely under the Hornblower's Provision but also directly under the First and Fifth Amendments. The amended complaint currently before the district court corrects this. Plaintiff seeks a continuance upon the instant appeal to unify the two causes of action and to obtain a finding of fact from the trial court whether the instant case comes within the Curtis precedent. In the event the trial court rejects Curtis applicability, then such will sharpen the alternative pleading of implied cause of action, since the Defendant will have no rational basis for declining to present to the special federal grand jury.

Appendix I:

Opinion and Order  
of the  
United States Court of Appeals  
for the  
Second Circuit,  
10 April 1979.



Present: Hon. William H. Mulligan  
Hon. Ellsworth A. Van Graafeiland  
Hon Lloyd F. MacManon\*  
Circuit Judges,

States Attorney for the

78-2132

Northern District of )  
California; and the FE- )  
DERAL GRAND JURY Sitting )  
in the Northern District )  
of California, )  
Appellees. )

---

Appeal from the United States District  
Court for the District of Connecticut

This cause came to be heard on the  
transcript of record from the United States  
District Court for the District of Connec-  
ticut, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now  
hereby ordered, adjudged, and decreed that  
the judgment of said District Court is af-  
firmed. The appellant lacks standing to  
pursue this action. Accordingly, the  
cause was properly dismissed for lack of  
subject matter jurisdiction.

s/William H. Mulligan

s/Ellsworth A. Van Graafeiland

s/Lloyd F. MacMahon

\* United States District Judge, for the  
Southern District of New York, sitting by  
designation.

Appendix J:

Complaint

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

ROBERT BRIAN CRIM,	) (
	) (Mar 19 2:08)
an individual,	) (PM '81 U.S.)
	) (District
Plaintiff,	) (Court New
	) (Haven, Conn)
v.	) (
	)
G. WILLIAM HUNTER,	) Case No.
	)
United States Attorney	) N81-150
	) COMPLAINT
for the Northern Dis-	)
trict of California,	)
	)
Defendant.	)

---

Plaintiff respectfully alleges that:

1. Plaintiff currently resides at 32  
Pierce Lane, the Borough of Naugatuck, District of Connecticut;
2. Defendant has his principal place  
of business located at 450 Golden  
Gate Avenue, the City of San Francisco, Northern District of California;

3. The instant action arising from what Plaintiff alleges to be a violation of the provisions of Title 18, United States Code, §3332(a), this Court has jurisdiction per the provisions of Title 28, United States Code, §§ 1331(a), 1343(4), 1361, 1391(e), and 2201. The Defendant is an officer of the United States of America acting in his official capacity and an employee of one of its agencies, the Department of Justice; the amount in controversy is in excess of the jurisdictional bar, exclusive of interest and costs; no real property is involved in the instant action.
4. Plaintiff is an historian who currently is preparing four manuscripts concerning the kidnappings of Patricia Campbell Hearst, aka Patricia Hearst Shaw, and the Iranian Hostage Crisis, which manuscripts are struc-

tured about the general theme of the nature of justice;

5. In the course of preparing the four manuscripts noted in paragraph 4 of the instant complaint, supra, Plaintiff did conduct certain research and investigation of the trial of Patricia Hearst, United States v. Hearst, Cr. 74-364 OJC/WHO (N.D.Cal., 1976) (see e.g. 563 F.2d 1331; 412 F. Supp. 858-895; 424 F.Supp. 307-323; 435 F.Supp. 29);
6. In the course of conducting the research and investigation noted in paragraph 5 of the instant complaint, supra, Plaintiff did develop certain evidence which Plaintiff believes proves that several as yet unindicted felonies against the United States were committed by a number of parties between the time of 21 August 1973

and 01 February 1979, which felonies included what Plaintiff believes to be capital and non-capital offenses;

7. The general Statute of Limitations for non-capital offenses is five years; the Statute of Limitations for capital offenses extends indefinitely.
8. On or about 10 February 1981, Plaintiff did convey to the following persons by registered mail pursuant to the requirements set forth in Title 50, United States Code, §401 et seq. information relating to certain of the alleged offenses noted in paragraph 6 of the instant complaint, supra:

Atty. George Kelly, Jr.,  
United States Attorney's Ofc.,  
450 Main Street,  
Hartford, Connecticut.



Mr. Michael Shaver,  
Records Management Div.,  
FBI Headquarters,  
9th at E streets,  
Washington, District of  
Columbia.

Atty. George Martinez,  
4th Floor, Chocolate Bldg.,  
900 Northpoint,  
San Francisco, California.

Atty. Kelly is an Assistant United States Attorney for the District of Connecticut; Mr. Shaver is a clerk employed by the Federal Bureau of Investigation; Atty. Martinez is counsel for Patricia Hearst Shaw on information and belief. See Exhibit 1 attached hereto (registered mail receipts and return certificates);

9. On or about 13 February 1981, Plaintiff did make formal request of Defendant to present to a special federal grand jury the evidence heretofore described, paragraph 6 of the instant complaint, supra, which

request was made pursuant to the provisions of Title 18, United States Code, §3332(a). Defendant was made aware of the persons to whom the materials and evidentiary references had been entrusted, paragraph 8 of the instant complaint, supra. See Exhibit 2 attached hereto (Robert B. Crim, letter to G. William Hunter, 13 February 1981; certified mail receipt; return certificate). Plaintiff retains certain of the evidentiary exhibits in his physical custody;

10. Defendant is an attorney employed by the United States and its agent, the Department of Justice, and is entrusted with the responsibility of prosecution of offenses committed against the United States within the meaning of Title 18, United States Code, § 3332(a);

11. Defendant having been informed on two occasions of the service of the materials, paragraph 8 of the instant complaint, supra, upon an employee of the Federal Bureau of Investigation (paragraph 9 of the instant complaint, supra; see Exhibit 3 attached hereto, Robert B. Crim, letter to G. William Hunter, 03 March 1981, certified mail receipt, return certificate), said service is equivalent to service upon Defendant per the rules of law applicable to the Ninth and District of Columbia circuits. United States v. Butler, 567 F.2d 885, 891 (CA9, 1978); United States v. Bryant, 439 F.2d 642, 650 (CA9, 1971); see Barbee v. Warden, Maryland Penitentiary, 331 F.2d 842, 846 (CA4, 1965); United States v. Consolidated Laundries Corp. et al., 291 F.2d 563, 570 (CA2, 1961);

12. The provisions of Title 18, United States Code, §3332(a) grant unto Plaintiff a "civil right" within the meaning of Title 28, United States Code, §1343(4); said provisions likewise impose upon Defendant a ministerial duty, Title 18, United States Code, §3332(a) encompassing in part a positive command which is free from doubt;
13. Plaintiff did warn Defendant of the need for prompt presentation of the evidence, paragraph 6 of the instant complaint, supra, to the special federal grand jury, paragraph 9 of the instant complaint, supra, due to Plaintiff's belief that the Statute of Limitations might lapse on certain of the alleged offenses were action to be delayed beyond midnight (0000 hours), 20 March 1981; and Plaintiff made clear that, because of

what he perceived to be the pending lapse in the Statute of Limitations, Plaintiff would consider all administrative remedies exhausted if Plaintiff received no positive response from Defendant by mail call of 19 March 1981. See Exhibit 3 attached hereto and previously described.

14. To the best of Plaintiff's information, knowledge, and belief, Defendant has not complied with Plaintiff's formal request of 13 February 1981, Exhibit 2 attached hereto, as of the stated deadline, Exhibit 3 attached hereto; wherefore Defendant has not discharged the ministerial duty required of him by the provisions of Title 18, United States Code, § 3332(a), and all administrative remedies are exhausted.

15. Publication imputing to another a

criminal offense subjects the defamer to liability, even in the absence of proof of special harm, particularly where the crime involved involves moral turpitude or has attached to it an infamous penalty; however, truth almost universally is a defense to accusations of libel;

16. Plaintiff, after exhaustive research of the Hearst case, has determined to Plaintiff's satisfaction that there was no legally recognizable insanity attendant to Patricia Hearst Shaw's mental condition during the time she was a captive of or a convert to the Symbionese Liberation Army;
17. Plaintiff, after exhaustive research of the Hearst case, has determined to Plaintiff's satisfaction that, as a matter of law, criminal responsibility must attach to each and every one

of the several acts allegedly committed by the Symbionese Liberation Army in violation of Federal and State statutes; and Plaintiff, after exhaustive research of the Hearst case, has not determined beyond a reasonable doubt that said responsibility properly attaches to Patricia Hearst Shaw; nor has Plaintiff, after exhaustive research of the Hearst case, been satisfactorily impressed with the "fairness" of the trial which Patricia Hearst Shaw received in San Francisco, California, in 1976;

18. Plaintiff, after exhaustive research of the Hearst case, has determined to Plaintiff's satisfaction that a definite connection can be drawn between several of the acts noted in paragraph 6 of the instant complaint, supra, and some of the consequences noted in paragraph 17 of the instant

complaint, supra, which connection Plaintiff wishes to state explicitly in Plaintiff's four manuscripts, paragraph 4 of the instant complaint, supra. Plaintiff asserts that explicit statement of said connections is an essential ingredient of the artistic integrity of Plaintiff's works, since in the absence of a finding that Patricia Hearst Shaw was unlawfully deprived of her Constitutional right to a fair trial, the historical connection between her circumstances and the Iran Crisis dissipates.

19. To say that someone unlawfully deprived another of that others Constitutional right to a fair trial is to charge the alleged violator(s) with a crime involving moral turpitude and to which is attached an infamous penalty; and to publish such an



allegation would subject the defamer to liability unless the allegation is true;

20. By his refusal to present Plaintiff and Plaintiff's investigation and evidence to the proper special federal grand jury, as is required by Title 18, United States Code, §3332(a), Defendant has deprived Plaintiff of Plaintiff's right to have Plaintiff's allegations tested for truthfulness;
21. By his refusal to present Plaintiff and Plaintiff's investigation and evidence to the proper special federal grand jury, as is required by Title 18, United States Code, §3332(a), Defendant has deprived Plaintiff's works of an element of their marketability, since in the absence of a certification of truthfulness, any responsible publisher must as a mat-

ter of law be hesitant to contract Plaintiff's works;

22. By his refusal to present Plaintiff and Plaintiff's investigation and evidence to the proper special federal grand jury, as is required by Title 18, United States Code, §3332(a), Defendant has altered the conclusion of Plaintiff's fourth manuscript in a material way, which alteration Plaintiff asserts has deprived Plaintiff's entire work of its immortality; and if Defendant is not mandamusd to perform the ministerial act required by Title 18, United States Code, § 3332(a), and requested of him by the Plaintiff, Plaintiff will suffer immediate and irreparable injury, for which damages at law are inadequate.
23. Plaintiff is entitled to the following declaratory relief: "Title 18,

United States Code, §3332(a) confers by statute upon investigators and witnesses (private or otherwise) the civil right to have information developed by them presented to a special federal grand jury upon proper request; and when an attorney for the Government requested to make such presentation to a special federal grand jury fails to honor such request, mandamus will issue to compel him to do so, and he may be held liable for any damages or injury his initial refusal to present might cause." Such declaratory relief is proper and necessary, since the original reason for the passage of Title 18, United States Code, §3332(a) was to enable private citizens to spur federal prosecutors to conduct prompt investigation of complaints relating to organized crime. Persons who find

it necessary to seek mandamus of a grand-jury investigation into organized crime place the clear and present danger of dying before the complaint is answered.

24. Plaintiff is entitled to the following declaratory relief: "Witnesses to and investigators of crimes against the commonweal are 'public intervenors' representing 'public values', not 'private values', and such intervenors are not 'interlopers'; rather, they are to be granted such standing at law as is necessary to assure that the criminal laws of the United States are enforced in an equitable and responsible manner." See Medical Committee for Human Rights v. S.E.C., 432 F.2d 659, 673-674 (CA DC, 1970), reh.den., vac. and rem. for dismissal for reasons of mootness, 404 U.S. 403 (1972); Office

of Communication of United Church of  
Christ v. F.C.C., 425 F.2d 543, 546-  
547 (CA9, 1969), reh. en banc den.,  
425 F.2d 551.

Wherefore Plaintiff prays this honorable  
Court to:

1. Issue Writ of Mandamus to Defendant  
obliging him to present the evidence  
and evidentiary references of Plain-  
tiff to the proper special federal  
grand jury sitting in the Northern  
District of California;
2. Declare the rights and privileges  
conferred by Title 18, United States  
Code, §3332(a) per the configurations  
of paragraph 23 of the instant com-  
plaint, supra, along with the stan-  
ding of witnesses and investigators  
as "public intervenors" per the con-  
figurations of paragraph 24 of the  
instant complaint, supra;

3. Grant unto Plaintiff a sum to be determined at a later time, the Plaintiff currently being unable to make any estimate of damages (beyond the threshold jurisdictional amount) in the absence of the special federal grand jury's action;
4. Award unto Plaintiff costs and attorney's fees.

Respectfully submitted this 19<sup>th</sup> day of  
March, 1981,

A handwritten signature in dark ink, appearing to read 'Robert B. Crim', written over a horizontal line.

Robert Brian Crim, pro se,  
32 Pierce Lane,  
Naugatuck, Ct., 06770.

Re Exhibits 1, 2, and 3:

These exhibits, which consist of letters and postal documents, are not reproduced here due to the limitations of the size format; copies of these exhibits may be found at pages A-35 to A-41 of the legal-sized appendix originally submitted by Petitioner to the Court on 08 August 1983 and now lodged with the Clerk for reference.

Appendix K:

Complaint  
(as amended).



Re Complaint (as amended):

This document is not reproduced here due to its size and the expense of the reproduction. A copy of Complaint (as amended) may be found at pages A-43 to A-53 of the legal-sized appendix originally submitted by Petitioner to the Court on 08 August 1983 and now lodged with the Clerk for reference.

Appendix L:

Complaint  
(as amended II).

Re Complaint (as amended II):

This document is not reproduced here due to its size and the expense of the reproduction. A copy of Complaint (as amended II) may be found at pages A-55 to A-65 of the legal-sized appendix originally submitted by Petitioner to the Court on 08 August 1983 and now lodged with the Clerk for reference.

Appendix M:

Complaint  
(as amended IV).

Re Complaint (as amended IV):

This document is not reproduced here due to its size and the expense of the reproduction. A copy of Complaint (as amended IV) may be found at pages A-67 to A-82 of the legal-sized appendix originally submitted by Petitioner to the Court on 08 August 1983 and now lodged with the Clerk for reference.

Appendix N:

Statutes.

Title 28, United States Code §1331  
(as amended), 90 Stat. 2721, 94 Stat.  
2369, says:

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

Title 28, United States Code §1343  
(a)(4) (as amended), 93 Stat. 1284, says:

The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person: \* \* \*

To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

Title 28, United States Code §1361,  
76 Stat. 744, says:

The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff.

Title 28, United States Code §1391(e),  
90 Stat. 2721, says:

A civil action in which a defendant is an officer or employee of the United States or any agency thereof acting in his official capacity or under color of legal authority, or an agency of the United States, or the United States, may, except as otherwise provided by law, be brought in any judicial district in which (1) a defendant in the action resides, or (2) the cause of action arose, or (3) any real property involved in the action is situated, or (4) the plaintiff resides if no real property is involved in the action. Additional persons may be joined as parties to any such action in accordance with the Federal Rules of Civil Procedure and with such other venue requirements as would be applicable if the United States or one of its officers, employees, or agencies were not a party.

The summons and complaint in such an action shall be served as provided by the Federal Rules of Civil Procedure except that the delivery of the summons and complaint to the officer or agency as required by the rules may be made by certified mail beyond the territorial limits of the district in which the action was brought.



Title 28, United States Code §2201,  
62 Stat. 964, 63 Stat. 105, 68 Stat. 890,  
72 Stat. 349, 90 Stat. 1719, 92 Stat.  
2672, says:

In a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1954 or a proceeding under section 505 or 1146 of title 11, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

Title 18, United States Code §3282,  
62 Stat. 828, 68 Stat. 1145, 75 Stat. 648,  
says:

Except as otherwise expressly provided by law, no person shall be prosecuted, tried, or punished for any offense, not capital, unless the indictment is found or the information is instituted within five years next after such offense shall have been committed.

Title 18, United States Code §3281,  
62 Stat. 827, says:

An indictment for any offense punishable by death may be found at any time without limitation except for offenses barred by the provisions of the law existing on August 4, 1939.

Title 18, United States Code §2, 62  
Stat. 684, 65 Stat. 717, says:

(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

(b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

Title 18, United States Code §3, 62  
Stat. 684, says in part:

Whoever, knowing that an offense against the United States has been committed, receives, relieves, comforts or assists the offender in order to hinder or prevent his apprehension, trial or punishment, is an accessory after the fact.

Title 18, United States Code §4, 62 Stat. 684, says:

Whoever, having knowledge of the actual commission of a felony cognizable by a court of the United States, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States, shall be fined not more than \$500 or imprisoned not more than three years, or both.

Title 18, United States Code §242, 62 Stat. 696, 82 Stat. 75, says in part:

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges or immunities secured or protected by the Constitution or laws of the United States \* \* \* shall be fined not more than \$1,000 or imprisoned not more than one year, or both; and if death results shall be subject to imprisonment for any term of years or for life.

Title 18, United States Code §371, 62 Stat. 701, says in part:

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

Title 18, United States Code §401,  
62 Stat. 701, says in part:

A court of the United States shall have power to punish by fine or imprisonment, at its discretion, such contempt of its authority, and none other, as --

(1) Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;

(2) Misbehavior of any of its officers in their official transactions; \* \* \*

Title 18, United States Code §1001,  
62 Stat. 749, says:

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up any trick, scheme, or device a

material fact, or make any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

Title 18, United States Code §1503,  
62 Stat. 769, 96 Stat. 1253, says:

Whoever corruptly, or by threats of force, or by any threatening letter or communication, endeavors to influence, intimidate, or impede any grand or petit juror, or officer in or of any court of the United States, or officer who may be serving at any examination or other proceeding before any United States commissioner or other committing magistrate, in the discharge of his duty, or injures any such grand or petit juror in his person or property on account of any verdict or indictment assented to by him, or on account of his having been or being such juror, or injures any such officer, commissioner, or other committing magistrate in his person or property on account of the performance of his official duties, or corruptly or by threats of force, or by any threatening letter or communication, influences, obstructs, or impedes the

due administration of justice, shall be fined not more than \$5,000 or imprisoned not more than five years, or both.

Title 18, United States Code §1504,  
62 Stat. 770, says in part:

Whoever attempts to influence the action or decision of any grand or petit juror of any court of the United States upon any issue or matter pending before such juror, or before the jury of which he is a member, or pertaining to his duties, by writing or sending to him any written communication, in relation to such issue or matter, shall be fined not more than \$1,000 or imprisoned not more than six months, or both.

Title 18, United States Code §1583,  
62 Stat. 772, says in part:

Whoever kidnaps or carries away any other person, with the intent that such other person be sold into involuntary servitude, or held as a slave; \* \* \*

Shall be fined not more than \$5,000 or imprisoned not more than five years, or both.

Title 18, United States Code §1622,

62 Stat. 774, says:

Whoever procures another to commit any perjury is guilty of subornation of perjury, and shall be fined not more than \$2,000 or imprisoned not more than five years, or both.

\* \* \*

Title 18, United States Code §2383,  
62 Stat. 808, says:

Whoever incites, sets on foot, assists, or engages in any rebellion or insurrection against the authority of the United States or the laws thereof, or gives aid or comfort thereto, shall be fined not more than \$10,000 or imprisoned not more than ten years, or both; and shall be incapable of holding any office under the United States.

Title 18, United States Code §2113  
(a,d,e), 62 Stat. 796, 64 Stat. 394, 66  
Stat. 46, 73 Stat. 639, 84 Stat. 1017,  
says in part:

Whoever, by force and violence, or by intimidation, takes or attempts to take, from the

person or the presence of another any property or money or any other thing of value belonging to, or in the care, custody, control, management, or possession of, any bank, credit union, or any savings and loan association; \* \* \*

Shall be fined not more than \$5,000 or imprisoned not more than twenty years, or both.

Whoever, in committing, or in attempting to commit, any offense defined in subsections (a) and (b) of this section, assaults any person by the use of a dangerous weapon or device, shall be fined not more than \$10,000 or imprisoned not more than twenty-five years, or both.

Whoever, in committing any offense defined in this section, or in avoiding or attempting to avoid apprehension for the commission of such offense, or in freeing himself or attempting to free himself from arrest or confinement for such offense, kills any person, or forces any person to accompany him without the consent of such person, shall be imprisoned not less than ten years, or punished by death if the verdict of the jury shall so direct.

Title 18, United States Code §1584,

62 Stat. 773, says in part:

Whoever knowingly and willfully holds to involuntary servitude \* \* \* any other person



for any term \* \* \* shall be fined not more than \$5,000 or imprisoned not more than five years, or both.

Title 18, United States Code §2381, 62 Stat. 807, says:

Whoever, owing allegiance to the United States, levies war against them or adheres to their enemies, giving them aid and comfort within the United States or elsewhere, is guilty of treason and shall suffer death, or shall be imprisoned not less than five years and fined not less than \$10,000; and shall be incapable of holding any office under the United States.

\* \* \*

It is to be noted that the capital provision of the treason statute is worded differently from the capital provisions of the Federal Kidnapping Act, 18 U.S.C. §1201 (repealed), and the National Bank Robbery Act, 18 U.S.C. §2113(e), and therefore does not suffer the same unconstitutional defect. Cf. United States v.

Jackson, 390 U.S. 570 (1968); Pope v. United States, 392 U.S. 651 (1968). It also is to be noted that 18 U.S.C. §1201 and 18 U.S.C. §2113(e) define "capital" crimes delimited under 18 U.S.C. §3281, the unconstitutionality of these provisions' death penalties notwithstanding. See e.g. Coon v. United States, 411 F.2d 422 (CA8, 1969). "It is for Congress, not the courts, to rewrite the definition of a capital offense." United States v. Narciso, 446 F.Supp. 252, 263n.4 (E.D.Mich., 1977). It not being possible to obtain a judgment against a statute, Shephard v. Wheeling, 4 S.E. 635 (W.Va., 1887); 39 Ops.Atty.Gen. 22 (1937), it follows that findings of unconstitutionality in a statute's application cannot void relations under the statute not specifically addressed by the decision of the court of review. See Chicot County Drainage District v. Baxter State Bank, 308 U.S. 371 (1940).

A-71

Appendix O:

A Sonnet

I fain would give to thee the loveliest  
things,  
For lovely things belong to thee of right,  
And thou hast been as peaceful to my sight,  
As the still thoughts that summer's twilight brings;  
Beneath the shadow of thine angel's wings  
O let me live! O let me rest in thee,  
Growing to thee more and more utterly,  
Upbearing and upborn, till outward things  
Are only as they share in thee a part!  
Look kindly on me, let thy holy eyes  
Bless me from the deep fulness of thy  
heart;  
So shall my soul in its right strength  
arise,  
And nevermore shall pine and shrink and  
start,  
Safe-sheltered in thy full-souled sympathies.

--James Russell Lowell